

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 JOSEPH OTERO
11 April 20, 2018, and April 23, 2018
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1 April 20, 2018

2 MR. SOLIS: May I approach on Mr. Otero's
3 testimony?

4 THE COURT: You may.

5 (The following proceedings were held at
6 the bench.)

7 MR. SOLIS: It could be we're beating the
8 proverbial dead horse. Here's my problem. If we're
9 going to allow edicts of the Court and deadlines
10 such as Jencks Act material that was to be disclosed
11 by the 26th, I'm hoping that that does have some
12 meaning and it means something. I wasn't here on
13 April 4 and 5 when Mr. Otero gave some testimony
14 with regard -- I think it was an attempt to walk him
15 off of the Billy Garcia case. And I've seen a more
16 recent -- I think it was just April -- a more recent
17 302 that came out as a result of a March 22, it
18 appears, interview of Mr. Otero that had not been
19 disclosed prior and the result of the FBI 302 that
20 is memorializing this 302 had not been disclosed
21 prior to. Mario didn't indicate that -- Mr.
22 Granberg has been around longer than I. He did
23 not -- this occurrence on the 23rd of March and the
24 Jencks was 26. That came and went, and evidently
25 just in the last week or two this Otero 302 came out

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1 with content that has not been disclosed before.
2 He's been available for interview with the FBI
3 prior. And again, my concern as is counsel's
4 concern has been prior to my chiming in, as it were,
5 that these edicts and agreements and deadlines,
6 they've got to mean something. So I'm asking the
7 Court to allow the testimony but to exclude this
8 more recent post March 26 Jencks material that
9 evidently was the subject of a 302 just in the last
10 week or so.

11 THE COURT: This was an interview after
12 the Jencks deadline; right?

13 MR. BECK: I don't know. It looks like
14 this was the March 22 interview.

15 MR. SOLIS: Prior to Jencks.

16 MR. BECK: That being said, it wasn't in
17 the United States' possession until whenever we
18 disclosed it. So we didn't have it.

19 THE COURT: It was disclosed when?

20 MR. SOLIS: Just in the last week or so.

21 MR. BECK: I can say he testified to
22 everything that's in there on April 4 and 5 in front
23 of the Court, so they were on notice at least for a
24 few weeks.

25 MR. SOLIS: I had a look at the

1 transcript. The testimony that I've seen does not
2 go into pretty critical stuff with regard to
3 Mr. Chavez.

4 THE COURT: Well, if it was all disclosed
5 at the hearing, you timely got a 302.

6 MR. SOLIS: I don't believe that it was.
7 I've looked at the transcript and cross-examination
8 by Mr. Castle with regard to any statement that
9 might have indicated that Mr. Garcia, Billy Garcia,
10 was involved in directing -- somehow instigating the
11 hit, and that was all it was limited to and walled
12 him off, basically.

13 THE COURT: Are you going to get very far
14 with this guy tonight?

15 MR. BECK: Not at this rate.

16 THE COURT: Why don't you take a look at
17 the transcript. I probably am not going to exclude
18 anything if he said everything in the transcript
19 that's in the 302.

20 MR. SOLIS: I'm virtually certain it's not
21 in there.

22 MR. BECK: And as I said, Your Honor, it's
23 not -- I mean, it's not as if we didn't produce
24 Jencks material, Rule 16, or whatever. We just
25 didn't have it at the time. So as soon as we had

1 it, we produced it. And again, the Court has ruled
2 many times on this, this is the way this is going.

3 THE COURT: I'm not sure there is much I
4 can do, Mr. Solis.

5 MS. HARBOUR-VALDEZ: Your Honor, while
6 we're here, we have another issue. We asked the
7 Government to give us a notice on their DNA expert
8 so we have time to file the appropriate auths and
9 get our experts here. We'd like a little bit more
10 because I know sometimes the process takes a little
11 longer. If we could get agreement on that, we'd
12 appreciate it.

13 THE COURT: What do you want?

14 MS. HARBOUR-VALDEZ: Appropriate
15 authorizations for you to get experts down here.

16 MS. ARMIJO: They asked for three days
17 just a few moments ago and I responded.

18 MS. HARBOUR-VALDEZ: On all DNA experts
19 Mr. Benjamin had asked several weeks ago and never
20 got a response, so we'd like to get something on the
21 record now.

22 MS. ARMIJO: We were uncertain which DNA
23 experts we were calling. We may not call any; we
24 may call five, because there is DNA on three
25 different murders or more. So that's why I asked

1 the question. I've been up here. We call a DNA
2 person, we will give them three days' notice. Is
3 that enough for the Court to get our authorizations
4 done?

5 THE COURT: I'll do my best. If you'll
6 flag them with Ms. Bevel. I know I do not have
7 anything that I owe anybody right at the moment.

8 MS. HARBOUR-VALDEZ: Because we don't have
9 notice that they're going to be called yet.

10 THE COURT: Okay.

11 MR. BENJAMIN: Before we leave, I'd like
12 to take up a subpoena for Ms. Gallegos so it's out
13 of the presence of the clients, essentially. We're
14 running out of time here.

15 MR. BECK: Might as well.

16 THE COURT: What is the issue? The
17 subpoena is going to remain valid. If she just flat
18 can't be here, I'll work with it at the time. But
19 Los Lunas to Las Cruces is not that big a deal, so
20 I'm not going to quash the subpoena. If she's
21 having a real medical condition, I might reexamine
22 it at the time, but right now I'm not going to quash
23 the subpoena.

24 MR. BENJAMIN: I understand that, Your
25 Honor.

1 THE COURT: Let's do it. Let's get going
2 with the testimony here.

3 (The following proceedings were held in
4 open court.)

5 THE COURT: All right. Mr. Otero, if
6 you'll stand and raise your right hand, before you
7 are seated, Ms. Bevel, my courtroom deputy, will
8 swear you in.

9 JOSEPH NESTOR OTERO,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated. Please
13 state your name for the record.

14 THE WITNESS: Joseph Nestor Otero.

15 THE COURT: All right, Mr. Otero.
16 Mr. Beck.

17 DIRECT EXAMINATION

18 BY MR. BECK:

19 Q. Good afternoon, Mr. Otero. Where were you
20 incarcerated in March of 2001?

21 A. Ol yellow.

22 Q. Just put the mic -- if you can adjust the
23 microphone and get yourself just a little bit
24 closer.

25 Where were you incarcerated in March of

1 2001, Mr. Otero?

2 A. 01 yellow, Southern New Mexico.

3 Q. So the Southern New Mexico Correctional
4 Facility housing unit 01.

5 MR. BECK: May we please see Exhibit 861?

6 Q. Mr. Otero, I'm showing you Government's
7 Exhibit 861. And up at the top left corner there,
8 is that the Ocean 1 housing unit at Southern New
9 Mexico Correctional Facility?

10 A. From what it looks like, yes.

11 Q. Okay. And there's two pods -- there's two
12 housing units, and do you agree with me that --
13 well, let me ask you this. In 2001, were any of
14 these internal fences up in the yard there in the
15 common area?

16 A. There were some.

17 Q. Okay. Were there that many, though?

18 A. There was some that are across to where
19 they could block us off.

20 Q. Okay. And did you know -- at that time
21 did you know an inmate named Rolando Garza?

22 A. Yeah, Looney.

23 Q. Is that the nickname of Mr. Garza --

24 A. Yes, sir.

25 Q. -- that he went by?

1 MR. BECK: Your Honor, the United States
2 moves to admit Government's Exhibit 78, I believe
3 without objection.

4 THE COURT: Any objection on Government's
5 Exhibit 78? Not hearing any, Government's Exhibit
6 78 will be admitted into evidence.

7 (Government Exhibit 78 admitted.)

8 BY MR. BECK:

9 Q. Mr. Otero, do you recognize who is
10 depicted in this photograph?

11 A. Yes.

12 Q. And who is that?

13 A. Looney, Rolando Garza.

14 Q. And how did you know Mr. Garza in 2001?

15 A. Well, I've known him from prior from that,
16 because we were in high school together, and that's
17 kind of how we made a communication. And me and him
18 were at the minimum restrict across the street from
19 Southern New Mexico. There's a minimum restrict
20 across the way, and we were there together. We got
21 transferred across to Main at the same time.

22 Q. By the Main, do you mean the Main here at
23 Southern?

24 A. Yeah, Southern Main.

25 Q. And so where did you live in relation to

1 Mr. Garza in March of 2001?

2 A. I lived in the cell next to the stairs on
3 the bottom on the bottom lower.

4 Q. Mr. Otero, are you or have you ever been a
5 member of the SNM prison gang?

6 A. No.

7 Q. Have you been a member of a gang?

8 A. Yes.

9 Q. And which gang is that?

10 A. Los Padilla.

11 Q. Is Los Padilla a street gang or a prison
12 gang?

13 A. Street gang.

14 Q. Are you a member of any prison gang?

15 A. No.

16 Q. Why not?

17 A. Don't care to be. I'm already affiliated.

18 Q. Mr. Otero, I'm going to show you now what
19 has been admitted as Government's Exhibit 12. Do
20 you recognize Government's Exhibit 12 as the housing
21 unit 01 yellow pod?

22 A. Yes.

23 Q. And is this where you were incarcerated
24 with Mr. Garza in 2001?

25 A. Yes, that's my cell right underneath the

1 stairs right there.

2 Q. So on Government Exhibit 12 there is an
3 exit sign that's pointing to the left, and just to
4 the left of that there is a door that I've circled
5 in red. Is that your cell?

6 A. Yes.

7 Q. And then next to it with the red tape on
8 the door, is that Mr. Garza's cell?

9 A. That's Mr. Garza's cell.

10 Q. So you two were next door; is that right?

11 A. Yes.

12 Q. In the 01 yellow pod, were there other SNM
13 members housed with you and Mr. Garza?

14 A. Yes, sir.

15 Q. Approximately from -- first, let me ask,
16 how many people were housed in the 01 yellow pod
17 with you at that time?

18 A. There's 16 cells, so all cells were
19 filled.

20 Q. And of those 16 cells, how many of those
21 16 gentlemen were SNM members, or did you believe
22 were SNM members?

23 A. At least 13 to 14 of them.

24 Q. So is it fair to say that you were one of
25 the only non-SNM members in that pod?

1 A. Yes.

2 Q. I'm going to show you what's been admitted
3 as Government's Exhibit 93. Do you recognize the
4 person in this photograph?

5 A. Yes.

6 Q. Who is that?

7 A. That's Critter, Chris Chavez.

8 Q. And was he incarcerated in 01 yellow pod
9 with you in March of 2001?

10 A. Yes.

11 Q. I'm going to show you what's been admitted
12 as Government's Exhibit 88. Do you recognize who is
13 depicted in this photograph?

14 A. That's Trigger.

15 Q. So you know this gentleman as Trigger; is
16 that right? Was Trigger incarcerated with you in
17 March of 2001 in the 01 yellow pod?

18 A. Yes, he was.

19 Q. Were you housed with these gentlemen and
20 Mr. Garza on March 26 of 2001?

21 A. Yes.

22 Q. I want to talk to you about the day before
23 March of 2001. What did you and Mr. Garza do that
24 afternoon?

25 A. That afternoon we got together and we went

1 to the gym because we were both trying to pick up
2 something we were supposed to get.

3 Q. And what was that something?

4 A. Some heroin.

5 Q. And from whom were you receiving the
6 heroin?

7 A. From Pancho.

8 Q. And do you know Pancho's name?

9 A. I just know him by Pancho.

10 Q. Do you know him as Frank Castillo?

11 A. Yeah.

12 Q. And so what happened when you met in the
13 gym, when you and Mr. Garza met Pancho, or Frank
14 Castillo, in the gym?

15 A. We were at the last quarters call so he
16 told me --

17 MR. SOLIS: Objection, hearsay, Your
18 Honor.

19 Q. And I'm not asking you what he said. Let
20 me ask the question a different way. When you met
21 up -- when you and Mr. Garza met up with
22 Mr. Castillo, or Pancho, did you receive the heroin
23 that you were supposed to get?

24 A. Yes.

25 Q. And what happened after you received the

1 heroin from Pancho?

2 A. We went back to the unit.

3 Q. And what happened once and Mr. Garza got
4 back to the unit?

5 A. We went into his cell and he gave me my
6 piece.

7 Q. What do you mean?

8 A. He cut it in half.

9 THE COURT: Mr. Beck, would this be a good
10 time for us to break for the evening?

11 MR. BECK: It would be a great time, Your
12 Honor.

13 THE COURT: All right. We'll be in recess
14 for the weekend. I know some of you are traveling.
15 Some of you haven't been back home in a while.
16 You're going to go back. So be safe on your
17 travels.

18 Thank you for your hard work. You've been
19 a great bunch to work with this week. You've been
20 prompt and done everything we've asked, and I
21 appreciate it very much.

22 Be safe and we'll see you at 8:30 on
23 Monday morning. All rise.

24 (The jury left the courtroom.)

25 THE COURT: All right. Everyone else can

1 head out. Have a good weekend. I appreciate your
2 hard work.

3 Mr. Benjamin, Ms. Armijo, why don't you
4 come up and let's see if we can quickly deal with
5 the subpoena issue.

6 (The following proceedings were held at
7 the bench.)

8 THE COURT: Where are we on the subpoena?

9 MS. ARMIJO: I sent Mr. Benjamin a
10 stipulation that -- and it is for foundation. And
11 just to give the Court a little bit of an idea, when
12 the Gallegoses were arrested at a hotel in
13 Albuquerque, Angela and another person were at the
14 hotel. They did a search of her vehicle. In the
15 vehicle was her purse, and in her purse, on the top,
16 was a letter that we believe was from her father,
17 and we believe it referenced Adrian Burns. So the
18 only thing we wanted her to testify to is
19 foundation. It's basically saying -- and I spoke to
20 her when she was served. She called me, I spoke to
21 her, and she indicated that, yes, she had received
22 the letter from her father after Adrian Burns had
23 died. And so that's really all we were going to use
24 her for. Because obviously, she'd be a hostile
25 witness to us. And I haven't received a response

1 from Mr. Benjamin. Basically it would be just that,
2 as far as the stipulation.

3 MR. BENJAMIN: And Your Honor, I guess
4 there are several things. I think the easiest is, I
5 don't know as they need her to get into that letter.
6 I mean, there is an officer sat down and got that
7 information from her. So I don't know why they
8 necessarily need her. I think they'd like to have
9 her.

10 The second issue is, I think -- and there
11 is a stipulation, there was a little more
12 information than simply foundational. It's the
13 questions I would ask her if she came down to
14 testify. In March of 2016, Angela Gallegos had
15 twins. She lost one of those twins and now has one
16 healthy daughter. She is pregnant. She is
17 delivering on May 23 is the date she's given me. I
18 have two different letters from two different care
19 providers that I provided to Ms. Armijo, and they
20 are treating her as a high-risk pregnancy and told
21 her not to travel. The Court observed it's three
22 hours, and the Court is more familiar with that than
23 I am. It's traveling, it's stress coming down to a
24 trial. And so I guess I propose a telephonic, for
25 lack of a better term, testimony. I think the issue

1 is -- and Ms. Armijo has graciously provided the FBI
2 to transport her, but the issue becomes really
3 travel, the stress of testifying in a case that your
4 father is in, even if you're not necessarily
5 testifying against him. I don't know why this -- is
6 why they're pulling her in.

7 THE COURT: I think you either take the
8 stipulation or she has to show up. You did your job
9 to try to prevent it, but I think we're a month away
10 from delivery, and so all of a sudden she appears on
11 that day and she's in labor, or she has been ordered
12 to bed rest or something like that, then I'll have
13 to deal with it on that day. But right now I think
14 we're far enough out, we probably can avoid any sort
15 of problems. So I'll just leave the subpoena in
16 place. If you want to take the stipulation, fine.
17 If you don't, I can't force them to accept your
18 stipulation either.

19 MR. BENJAMIN: I understand that. I'm
20 failing to understand why they need her, or
21 specifically her. But I realize it is their case
22 and they can --

23 MS. ARMIJO: I guess I should ask, because
24 I know that the defense, especially Mr. Sindel, has
25 been very particular about hearsay, as all parties

1 should be, and about foundation. Are you saying
2 that if we have an officer come in and say she told
3 me that she was -- this is her father's and you're
4 not going to dispute that Joe Gallegos wrote it?

5 MR. BENJAMIN: I think that we can
6 certainly get that we're not going to dispute that
7 Joe Gallegos wrote it. I guess I'd like the second
8 half of what she told the officer on the recording.

9 MS. ARMIJO: Well, I think that's hearsay.

10 THE COURT: I just don't see much we can
11 do here. Y'all seem to not be able to agree.

12 MR. BENJAMIN: I'll talk to my client,
13 Your Honor.

14 THE COURT: She'll have to either accept
15 their stipulation or she'll have to show up.

16 MR. BENJAMIN: I understand.

17 MS. ARMIJO: Thank you.

18 THE COURT: Y'all have good weekend.

19 MR. BENJAMIN: I appreciate the time.

20 (The Court stood in recess.)
21
22
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24
25

1 April 23, 2018

2
3 THE COURT: All right. Good morning
4 everyone. Let's go on the record. I know there are
5 some things we need to discuss before we bring the
6 jury.

7 Mr. Solis, I think you had -- there you
8 are. You have some issues you wanted to raise?

9 MR. SOLIS: Yes, sir. There are two
10 issues, Your Honor. One is the subject of a motion
11 I filed as document 2141. And I'll just hit the
12 highlights, and this was sort of broached as we were
13 towards the end of the day on Friday. And it
14 essentially addresses what I, from my vantage point
15 is what's been plaguing the defense since the
16 inception of the trial. That's the slow drip of
17 late-breaking 302s or similar documents. And so in
18 that vein, I filed a motion to where -- I'll hit the
19 highlights. There was a 302 produced to the
20 defendant Chavez on April 12, after trial commenced,
21 and that was based on a March 21, 2018, interview of
22 Mr. Joseph Otero just a few weeks -- a couple weeks
23 prior to the April 12 disclosure.

24 In that 302 the motion on page 2 contains
25 essentially the paragraph or the gist of the

1 statements that I take issue with insofar as it was
2 not previously disclosed in a timely fashion, is
3 what we're contending, and as recently as April 7,
4 here again, this year, 2018, the Government had
5 disclosed an audio interview of Joseph Otero from
6 April 26, 2001. So the audio was disclosed April 7.
7 The interview on March 21 of this year produced a
8 302 that was disclosed April 12.

9 The Government had access to Mr. Otero for
10 several years, and his whereabouts was not unknown
11 to the Government. Certainly they could make easy
12 contact with Mr. Otero, and neither of those 302s or
13 other Government-related or important state
14 government or DOC-related documents were the
15 contents of any of those reports or 302s similar to
16 what's contained in the most recent and recently
17 disclosed 302 that was disclosed April 12, and is
18 contained on page 2 of the document 2141.

19 Our position is that I'm of the opinion
20 that the Court's pronouncement when we were having
21 the James hearing, I think it was the first day, the
22 Court announced that the James disclosure -- Jencks
23 disclosure would be March 26, 2001 (sic). I contend
24 that is essentially a discovery order, and
25 subsequent to that we've had a drip -- other counsel

1 have had a drip of other Jencks from statements
2 disclosed post March 26. I know there has been an
3 issue with the Government in that in some cases a
4 witness has evaded them or they've had trouble
5 locating him or her, and that is part of the
6 explanation for producing late Jencks 302s or
7 statements, but as I mentioned in this case, that's
8 certainly not the case.

9 So that being the case and it sort of
10 being the pattern and trend here, I'm asking the
11 Court, pursuant to federal rule of criminal
12 procedure 26 to not impose necessarily the death
13 penalty and prohibit Mr. Otero from testifying, but
14 certainly prohibit the Government from eliciting
15 testimony with regard to the content of that most
16 recent 302 in that it was again disclosed post March
17 26, and the Government had had access to that
18 witness for several years and several months. And
19 again, it came post the March 26 date.

20 Essentially, what I'm arguing,
21 respectfully, Your Honor, is that the Court's edicts
22 have to have some meaning, they mean something,
23 words mean something. And it seems that it should
24 be applicable to the Government, as well. And so
25 for those reasons I'm asking the Court to prohibit

1 the testimony along the lines of what's included in
2 the most recent 302, particularly that which is
3 included on page 2.

4 I know the Government will get up here and
5 say -- and I anticipate Government is going to say
6 that I basically have conflated Rule 16, 26, and 18
7 USC 3500, which is the Jencks Act statements.
8 That's true, but that's where we're at now. The
9 frustration I think has reached a boiling point
10 where these statements are coming in post March 26,
11 and when the Government has really no explanation
12 other than they're just now having access to those
13 statements when they've had access to the witness
14 for many months, in this case years.

15 So that's one issue, Your Honor. There is
16 another issue that I can address, but I'm not sure,
17 to allow Mr. Beck to respond or address it now, but
18 there is another issue that is vitally important I
19 think for Mr. Chavez.

20 THE COURT: Does it need to be addressed
21 now before we bring the jury in?

22 MR. SOLIS: I think it appears that's the
23 case. And I've spoken to Mr. Beck. He's going to
24 address that with the witness towards the end of the
25 direct testimony, so I think it's vitally important

1 we address it now.

2 THE COURT: Go ahead.

3 MR. SOLIS: So your Honor, Mr. Beck has
4 advised that there is a 302 forthcoming. The
5 allegation is that at the break of Friday's
6 proceedings there was a quote, unquote a "kiss of
7 death" from Mr. Chavez to the witness, Mr. Otero, as
8 we were breaking. That is an allegation that
9 essentially is an offense, a crime. And I've
10 asked -- I did an initial canvassing of the security
11 officers or marshals here with regard to whether
12 they observed anything. The supervisory officer
13 that sits at the back, the officers that sit here
14 next to your law clerks, and those that sit next to
15 Mr. Chavez, next to counsel table. Neither have
16 suggested that any such behavior was observed or
17 documented or reported to them. I informally have
18 canvassed the co-counsel, and no one has made any
19 indications as to what they observed. I certainly
20 didn't.

21 So before we allow Mr. Beck to get into
22 that, I certainly would want to make the record with
23 witnesses that were here present during that Friday
24 proceeding, towards the end of the day, to see if
25 they themselves observed any sort of behavior that's

1 described to me by Mr. Beck as a result of Mr. Acee,
2 I think, Special Agent Acee was talking with
3 Mr. Otero at the conclusion of Friday's proceedings.
4 I think it's important we at least vet this out to
5 see if we're going to allow it. I'm prepared to
6 call counsel as witnesses and any other witnesses
7 that were present to prohibit that testimony or
8 evidence, Your Honor. That's an issue that's
9 important, as well.

10 THE COURT: Well, Mr. Beck, why don't you
11 approach on either the evidence that's in the motion
12 to exclude or this kiss of death, whatever that is,
13 before you ask any questions on it.

14 MR. BECK: I mean, my anticipation is that
15 I think the evidence was excluded. I haven't looked
16 at the motion, but I think it's just this witness'
17 account of what he saw, so I mean --

18 THE COURT: That's what it looked like to
19 me, too. So I'd be inclined not to exclude what he
20 saw.

21 All right. All rise.

22 (The jury entered the courtroom.)

23 THE COURT: Everyone be seated. Good
24 morning, ladies and gentlemen. I know some of you
25 did some long traveling over the weekend, and I

1 appreciate you getting back here and being on time
2 and ready to go. I went over to Pecan Grill on
3 Friday night and spent the night, so I went back to
4 Albuquerque on Saturday, and then came here
5 yesterday afternoon, went back to Pecan Grill. So I
6 must like the place. I was able to sit on the patio
7 last night. It was kind of nice.

8 Thank you for all you're doing for us.
9 You've been a wonderful bunch to work with. I know
10 the parties and the counsel appreciate it. I
11 certainly do. You've just done everything we've
12 asked and been very gracious about it, and we
13 appreciate all you've done for us.

14 All right. Mr. Beck, I should have asked
15 before we came in, are we going back to Mr. Otero?

16 MR. BECK: Yes.

17 THE COURT: All right. Is Mr. Otero --
18 Mr. Blackburn, are you feeling better today? Can't
19 feel any worse?

20 MR. BLACKBURN: I wore this shirt today in
21 honor of how I felt that day. Thank you, Your
22 Honor.

23 THE COURT: Well, I looked down last night
24 and I didn't wear a tied shirt, because I didn't
25 pack any ties. So I had to go scrambling to find a

1 tie this is morning.

2 MR. BECK: Your Honor, to make good use of
3 our time, the United States would move to admit 796,
4 which is Mr. Otero's pen pack.

5 THE COURT: Any objection from any
6 defendant?

7 All right. Government's Exhibit 796 will
8 be admitted into evidence. While we're waiting, why
9 don't I see counsel up here at the bench?

10 (Government Exhibit 796 admitted.)

11 (The following proceedings were held at
12 the bench.)

13 THE COURT: So is he wanting to testify
14 that Mr. Chavez gave him the -- what is a kiss of
15 death? What is that?

16 MR. BECK: I think he's going to say that
17 it was a kiss that he took in a threatening nature,
18 that he was being threatened for testifying.

19 THE COURT: Football players sometimes
20 make other football players -- that sort of thing.

21 MR. SOLIS: Our position is, did it even
22 happen? That's why I did want to call --

23 THE COURT: Do you have anybody else that
24 will state that other than him?

25 MR. BECK: Just him. He was standing

1 there with Special Agent Acee. Special Agent Acee
2 was introducing himself, and Mr. Otero kind of shook
3 his face, and Special Agent Acee said, "What?" And
4 he said "Mr. Chavez just" -- he didn't say
5 Mr. Chavez, he said, "Critter just gave me a kiss."

6 THE COURT: Did Acee see it?

7 MR. BECK: Acee did not. He was standing
8 right next to him. Acee was facing from the front.

9 THE COURT: Have you located anybody else
10 that's seen this thing?

11 MR. BECK: I have not.

12 THE COURT: Well, I don't think I can
13 prohibit him from testifying, but I'll let you call
14 witnesses to say it didn't occur. And stay away
15 from the attorneys.

16 MR. SOLIS: What I wanted to do was call
17 witnesses that say it didn't occur, to persuade the
18 Court not to allow that testimony.

19 THE COURT: Nobody is going to say they
20 saw it other than him, so we don't need to call
21 witnesses for you to establish that. Nobody has
22 seen it. If you want to call Acee to the stand to
23 say he didn't see it or bring that up in cross or
24 anything, if you can think somebody else,
25 investigators or somebody else.

1 MR. SOLIS: It's difficult to unring the
2 bell.

3 THE COURT: Well, it is, but if that's
4 what's going on in the courtroom, we can't have it.
5 So I probably can't sit here and let him get away
6 with it.

7 MR. SOLIS: You're assuming --

8 THE COURT: That's true, but I think it's
9 just part and parcel of the evidence, so I'll let
10 it -- I'll let you put on some witnesses to rebut
11 it.

12 MR. GRANBERG: Your Honor, why was
13 Mr. Acee speaking with Mr. Otero after the
14 proceedings? He was sworn in as a witness.

15 THE COURT: I thought the rule y'all
16 agreed to was that the Government in the direct
17 examination could talk to him. I didn't think -- I
18 guess it was lawyers.

19 MR. BECK: It was lawyers; right.

20 THE COURT: Tell Mr. Acee not to be
21 talking to witnesses.

22 MR. SOLIS: So Your Honor, just to clarify
23 for the record, what I wanted to do was put on
24 witnesses, lawyers, including security personnel, to
25 address whether they themselves saw anything of the

1 sort that was described by Mr. Otero. Is the Court
2 denying that?

3 THE COURT: You can put on marshals, if
4 you want to put somebody on. If you want to put
5 Acee on --

6 MR. SOLIS: My preference, Your Honor, was
7 to put these on outside the presence of the jury, so
8 the Court can make the determination.

9 THE COURT: There is not a determination
10 to make. Nobody saw it except Mr. Otero. So there
11 is no reason to put witnesses on. The issue is
12 undisputed.

13 MR. SOLIS: My hope was the Court will not
14 permit his testimony with regard to --

15 THE COURT: It puts everybody in a
16 difficult position when it occurs here in the
17 courtroom. But things that occur in the courtroom,
18 it's part and parcel of the trial, so I'm not going
19 to keep it out.

20 MR. SOLIS: So that request is denied?

21 THE COURT: Do you want to put all these
22 lawyers on the stand to say something we already
23 know what they're going to say? Yeah, that's
24 denied.

25 MR. SOLIS: And the first subject of the

1 motion, that too is denied?

2 THE COURT: You need to exclude his
3 testimony.

4 MR. BECK: I'll make a record, Your Honor.
5 Based on the 948, which is the supplemental report
6 early on in 2001 -- I think it was the April 24,
7 2001, interview of Mr. Otero, the report says that
8 inmate Otero further stated that he has known both
9 inmate Martinez and inmate Chavez were involved in
10 the murders, so he's remained consistent with 2001.

11 MR. SOLIS: I'm familiar with that
12 statement.

13 THE COURT: Let me ask Mr. Beck this: Did
14 the United States produce the interview notes from
15 potentially Jencks material to this interview?

16 MR. BECK: Yes, we produced all the
17 interview notes.

18 THE COURT: Since the interview took place
19 on --

20 MR. BECK: March 22, I think.

21 THE COURT: All the notes?

22 MR. BECK: I think it was April 12. We
23 produced the 302 and the notes.

24 THE COURT: At the same time?

25 MR. SOLIS: I've yet to see any notes. I

1 have a 302, but not any notes. The report Mr. Beck
2 made reference to, I am aware of that report.
3 However, this most recent 302 goes way beyond the
4 details contained in that 2001 report, and the
5 statement from Mr. Otero goes way beyond, and it
6 goes into detail that does not contain any
7 previous --

8 THE COURT: Why don't you check on whether
9 there were notes produced and when they were
10 produced, so I can know when.

11 MR. BECK: That would surprise me. We
12 produced all the notes simultaneously with the 302s.
13 So I will go back and check. And if I made a
14 misrepresentation, I will let the Court know.

15 THE COURT: What was the Jencks deadline?
16 March 26?

17 MR. BECK: March 26. But we didn't have
18 the 302 by that date. We produced it when we had it
19 on April 12.

20 THE COURT: Did you -- but you must have
21 had the notes by that date?

22 MR. BECK: I would think we probably had
23 the notes.

24 MR. SOLIS: That's the subject of my
25 motion, Your Honor. I'm not alleging bad faith, but

1 there is gamesmanship going on. We don't have it
2 yet. They've had access to this witness for months,
3 if not years. He's not been on the streets. He's
4 been in jail. It's that slow trickle of
5 late-breaking --

6 THE COURT: I just don't think there is
7 much I can do about that. This is trial work, and
8 that's the nature of these things. We're going to
9 continue to have statements being made by these
10 people. So I won't grant the motion to exclude his
11 testimony.

12 MR. SOLIS: Thank you, Your Honor.

13 MR. BECK: For the record on this, and for
14 the record on Michael Jaramillo, there is no
15 affirmative obligation, there is nothing in the law,
16 there is nothing in the --

17 THE COURT: Let's stick with Otero right
18 now, because I do think that Jaramillo is a
19 different person.

20 MR. BECK: I agree. But there is nothing
21 in the rule, there is nothing in the law, there is
22 no affirmative requirement on the United States to
23 go out and get testimony. There is a duty to
24 investigate. We have that. We have the reports.
25 We have the information. Anything above and beyond

1 that the United States does to prepare its case and
2 it turns over to the defendants. So there is no
3 gamesmanship. I produced the 302.

4 THE COURT: Where is the witness?

5 MS. ARMIJO: They said they're bringing
6 him up.

7 MR. BECK: There is no gamesmanship. It
8 seems we got the 302 on Mr. Chavez' kiss.
9 Immediately when it came into my possession, I sent
10 that to Mr. Solis and Mr. Granberg yesterday, even
11 though it hasn't been produced, to alert them to
12 that. So --

13 THE COURT: All right. Well, I'll allow
14 the testimony of Mr. Otero on both those counts.

15 (The following proceedings were held in
16 open court.)

17 THE COURT: All right. Mr. Otero, I'll
18 ask you to return to the witness box, and I'll
19 remind you that you're still under oath.

20 All right. Mr. Beck, if you wish to
21 continue your examination of Mr. Otero, you may do
22 so at this time.

23 MR. BECK: Thank you, Your Honor.

24 THE COURT: Mr. Beck.

25

1 JOSEPH NESTOR OTERO,
2 after having been previously duly sworn under
3 oath, was questioned, and continued testifying
4 as follows:
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1 CONTINUED DIRECT EXAMINATION

2 BY MR. BECK:

3 Q. Good morning, Mr. Otero.

4 A. Good morning.

5 Q. Just move that mic a little bit closer to
6 you.

7 When we left off Friday afternoon, we were
8 talking about the evening of March 25, 2001, just
9 before -- I think when we left, we talked about
10 going to the gym with Mr. Garza. Do you remember
11 that?

12 A. Yes.

13 Q. What happened when you went to the gym
14 with Mr. Garza?

15 A. We went to the gym to pick up something
16 from a friend of ours.

17 Q. I didn't catch that last part.

18 A. We went to pick up some heroin from a
19 friend of ours.

20 Q. And who did you get the heroin from?

21 A. Paul -- Pancho.

22 Q. Pancho. Is that Pancho, also known as
23 Frank Castillo?

24 A. Yes.

25 Q. What happened after you and Mr. Garza

1 received the heroin from Pancho?

2 A. We went back to the unit.

3 Q. And what happened when you get back to the
4 unit?

5 A. We got back to the unit, we went into his
6 room and we cut it in half. He gave me my half and
7 we did a shot together, and then I went back to my
8 house.

9 Q. All right. And just so we're -- will you
10 please bring up Exhibit 11? Mr. Otero, you
11 recognize this as the front of the O-1 housing unit?

12 A. Yes.

13 Q. Is that where you were housed on March 25,
14 2001, when you went back to the cell with Mr. Garza?

15 A. Yes.

16 Q. Exhibit 12, please. Just to reorient the
17 jury here, this cell, 1118 -- that was Mr. Garza's
18 cell; is that right?

19 A. Yes.

20 Q. And where was your cell?

21 A. Underneath the stairs.

22 Q. That cell on the left side; is that right?

23 A. Yes.

24 Q. After you and Mr. Garza did the heroin and
25 you went back to your cell, what happened?

1 A. People started getting grouchy and upset
2 because they didn't get what they wanted, and stuff
3 like that. And just a normal night. Went down to
4 lockdown for count, and then after lockdown for
5 count, people came out mad or high, enjoying the
6 night.

7 Q. All right. Let me take you back to a few
8 things. So I understand that after you got high,
9 you heard some disturbances in the unit; is that
10 right?

11 A. Yeah.

12 Q. Then the next day -- well, you went into
13 lockdown that night; is that correct?

14 A. Yes.

15 MR. SOLIS: Object to the leading nature
16 of the questions, Your Honor.

17 THE COURT: Don't lead.

18 BY MR. BECK:

19 Q. What is lockdown?

20 A. Lockdown is when they put you in your cell
21 and they put you away for the night.

22 Q. And so were you locked up in your cell all
23 night?

24 A. Yes.

25 Q. What happened the next morning?

1 A. I woke up to -- sounded like somebody was
2 fighting next door, banging on the walls and shit.

3 Q. All right. And I'm going to bring up
4 Exhibit 75 for you. Do you recognize this as a
5 diagram of the Ocean 1 unit in which you were
6 housed?

7 A. Yes.

8 Q. If I understand your testimony, you were
9 housed in that cell on the left side in between
10 yellow pod and blue pod; right?

11 A. Yes.

12 Q. And the cell just on top of you -- was
13 that Rolando Garza's cell?

14 A. It's not on top of me. It's right next
15 door.

16 Q. So on this diagram, just above that, right
17 next door in yellow pod, the one that I just
18 circled, is that Rolando Garza's cell?

19 A. Yes, sir.

20 Q. So when you heard the disturbances, were
21 they coming from Mr. Garza's cell in yellow pod or
22 the cell in blue pod?

23 A. In yellow.

24 Q. How long after you woke up did you hear
25 these?

1 A. It's kind of what woke me up.

2 Q. At this time were the units open,
3 meaning -- or excuse me, not the units. Were the
4 cells open, meaning the inmates could move freely?

5 A. Yeah, I think it was 5:15, 5:30, around
6 there, when they popped the door.

7 Q. What happened after you heard the sounds
8 in Mr. Garza's cell?

9 A. I put my shoes on, got ready, just in case
10 I had to fight with somebody; and came out my door,
11 turned left, seen people standing around my cell,
12 and went towards the shower, to go something that I
13 had over there. And I looked to the left and woke
14 up to somebody being killed.

15 Q. All right. So if I understand, you were
16 walking from your cell towards the shower; is that
17 right?

18 A. Yes.

19 Q. And then when you turned left and you
20 looked in Mr. Garza's cell, what did you see?

21 A. I seen Critter, Eugene, and Trigger inside
22 the cell wrestling with Looney.

23 Q. What did you see then?

24 A. I seen that they were holding him down and
25 I didn't know what the fuck was going on, but I

1 found out that he had been killed.

2 Q. I'm going to show you what's been admitted
3 as Government's Exhibit 93. Is this the person you
4 know as Critter that you saw in the cell with
5 Mr. Garza that morning?

6 A. Yes.

7 Q. Do you see Mr. Chavez here in court today?

8 A. Yes.

9 Q. Where is he?

10 A. He's right there in the gray suit.

11 Q. What color tie is he wearing?

12 A. I can't tell. I can't see with the
13 computer in the way.

14 Q. What does he look like?

15 A. Dark hair, mustache.

16 MR. BECK: Let the record reflect that
17 Mr. Otero identified the Defendant Chris Chavez.

18 THE COURT: The record will so reflect.

19 BY MR. BECK:

20 Q. I'm going to show you Government's Exhibit
21 110. Do you know who this individual is?

22 A. He's changed.

23 Q. Is that the individual that you saw in the
24 cell and identified as Eugene Martinez?

25 A. Yeah.

1 Q. So was he in the cell with Mr. Chavez and
2 Mr. Garza?

3 A. Yes.

4 Q. I'm going to show you Government's Exhibit
5 88. Is this the individual that you identified as
6 Trigger?

7 A. Yes.

8 Q. Is this the individual that was in the
9 cell with Garza, Mr. Chavez, and Eugene Martinez?

10 A. Yes.

11 Q. Going back to Exhibit 75, what happened
12 after you looked in Mr. Garza's cell?

13 A. I proceeded to the shower to go get a
14 shank that I had in the drain.

15 Q. Why were you getting a shank that you had
16 in the shower?

17 A. Just in case somebody tried to come at me.

18 Q. What happened after you got the shank?

19 A. I went back to my cell, got a cup, filled
20 it up with water, and put it in the microwave.

21 Q. Did you see anybody else outside on the
22 tier on your way back to your cell?

23 A. Jesse Ibarra, a guy named Chacon, a couple
24 other guys.

25 Q. What was Mr. Chacon doing when you

1 proceeded back to your cell?

2 A. He had a mop in his hand.

3 Q. And what was he cleaning?

4 A. I don't know if he was cleaning something
5 up or if he was getting prepared to swing it at me.

6 Q. And where did you see Mr. Chacon?

7 A. At the top of the stairs.

8 Q. Is that the stairs that I just circled on
9 Government's Exhibit 75?

10 A. Yes.

11 Q. What happened when you went back to your
12 room?

13 A. I didn't go back to my room. I went by
14 the front doors and stood by the front door.

15 Q. What happened next?

16 A. I waited until they called -- they had a
17 running club at that time. Waiting till they popped
18 the door or called breakfast first, whatever came
19 first.

20 Q. Is it unusual to go do heroin first thing
21 in the morning when you wake up?

22 A. Not if you're a heroin addict.

23 Q. So would you say that may be a normal
24 occurrence for heroin addicts in prison?

25 A. Yeah. Yes.

1 Q. When they opened the doors, what happened?
2 Did you go outside?

3 A. Three people came out of Looney's house,
4 Mr. Garza's house, walked past me, told me if I knew
5 what was best, I'd keep my mouth shut.

6 Q. Who were those three people?

7 A. Critter, Trigger, and Eugene.

8 Q. And who told you if you knew what was
9 best, you'd keep your mouth shut?

10 A. Chris.

11 Q. Is that Mr. Chris Chavez?

12 A. Yes.

13 Q. What happened next?

14 A. They went out ahead of me. I was kind of,
15 like, didn't know what the fuck to do, because kind
16 of, like, I was on the spot right there. So I
17 followed them out, hoping to run into somebody
18 outside that would fucking give me esquina or
19 something. And when we were walking out, I seen one
20 of them throw something up on the roof. And then we
21 went out to the yard, and I went out together with
22 somebody.

23 Q. Do you know who you saw throw something on
24 the roof?

25 A. Yes.

1 Q. Who was that?

2 A. Chris.

3 Q. Is that Mr. Chavez?

4 A. Yes.

5 Q. Do you know what he threw on the roof, or
6 can you describe it?

7 A. He threw something like a shoestring or a
8 mesh bag tie, or something.

9 Q. I'm going to show you Government's Exhibit
10 861. If I understand, when you came out of the
11 unit, you proceeded down from where it's marked
12 Ocean 1 in 861; is that right?

13 A. Yes.

14 Q. And where did you see Mr. Chavez throw
15 something on the roof?

16 A. Right as soon as we walked out the unit.

17 Q. Is that sort of where the A and the N are
18 in Ocean, there, Exhibit 861?

19 A. Yes, right there between the gate and the
20 wall.

21 Q. Mr. Otero, I'm going to show you
22 Government's Exhibit 796. That's your name and
23 Corrections Department number; is that right?

24 A. Yes.

25 Q. Have you ever seen a penitentiary pack

1 from the Corrections Department?

2 A. What do you mean?

3 Q. That answers my question. Have you ever
4 seen this document before?

5 A. I've seen something like it, but I'm not
6 exactly sure. But yeah.

7 Q. I'm going to take you to Bates No. 69107.
8 Do you recognize this as a judgment, partially
9 suspended sentence, and commitment for you on a
10 guilty plea in 1995?

11 A. In front of Murdock, yes.

12 Q. And did you plead guilty to attempted
13 conspiracy to commit first-degree murder?

14 A. Yes.

15 Q. And also aggravated battery with a deadly
16 weapon?

17 A. Yes.

18 Q. And child abuse, negligently caused?

19 A. Yes.

20 Q. For that, were you sentenced to do a total
21 of 23 years with eight years suspended for 15 years?

22 A. Yes.

23 Q. I'm going to take you to Bates No. 69111.
24 Do you recognize this as an order and commitment to
25 the Department of Corrections for you in 2004?

1 A. Yes.

2 Q. And did you receive this because you
3 violated your probation?

4 A. Yes, my parole.

5 Q. When you violated your parole, was the
6 full sentence of the 23 years imposed on you?

7 A. Yes.

8 Q. I'm going to take you to Bates 69114. Do
9 you recognize this as a judgment and sentence for
10 you from 2013?

11 A. Yes.

12 Q. And is this judgment and sentence because
13 you pled guilty to two counts of residential
14 burglary and larceny over \$500?

15 A. Yes.

16 Q. Did it also include contributing to the
17 delinquency of a minor?

18 A. Yes.

19 Q. Why is that?

20 A. Why is what?

21 Q. Why did you also plead guilty to
22 contributing to the delinquency of a minor in this
23 case?

24 A. Because I had my son driving for me.

25 Q. And were you sentenced to do seven years

1 and six months' incarceration for this?

2 A. Yes.

3 Q. I'm going to take you to Bates 69120. Do
4 you recognize this as a judgment, sentence, and
5 commitment from 2014 for pleading no contest to
6 attempted aggravated battery?

7 A. Yes.

8 Q. And that was on a household member?

9 A. Yes.

10 Q. And for this were you sentenced to two
11 years and six months to run concurrent to your seven
12 years and six months in the 2013 case?

13 A. Yes.

14 Q. Mr. Otero, I'm going to show you a
15 side-by-side of Government's Exhibit Number 794 and
16 Government's Exhibit 646. I obviously have the
17 wrong number for 794. For 798. So I read it wrong.
18 798 and 646.

19 Mr. Otero, this is an offender physical
20 location history sheet from the Corrections
21 Department for you on the left, and for Mr. Garza or
22 Looney on the right. And I want to take you to the
23 left 798, page 3. In March of 2001 you were
24 incarcerated at the Southern New Mexico Correctional
25 Facility in Ocean 1, yellow pod; is that right?

1 A. Yes.

2 Q. You were in cell 1119; is that right?

3 A. Yes.

4 Q. Let's see if I can get a better line going
5 here. Do you see where that's reflected on this
6 offender physical location history that you were
7 incarcerated there from November of 2000 until
8 September 2001?

9 A. Yes.

10 Q. Is that accurate? Were you incarcerated
11 in the yellow pod from November of 2000 to September
12 2001?

13 A. Yes.

14 Q. Do you see on Exhibit 646 where I just
15 underlined that Mr. Garza was also incarcerated in
16 Ocean 1, yellow pod, in the cell right next door,
17 1118?

18 A. Yes.

19 Q. And that he was there from December 2000
20 to March 26, 2001?

21 A. Yes.

22 Q. And was March 26, 2001, the day that he
23 was murdered?

24 A. That I remember, yes.

25 Q. I'm going to show you Government's Exhibit

1 92. And then if we can go to -- it's probably page
2 3.

3 Do you see here on page 3, on the offender
4 location history for Mr. Christopher Chavez, do you
5 see that he was incarcerated in South O-1, yellow
6 pod, 2214 --

7 A. Yes.

8 Q. -- from January 2001 to April 2001?

9 A. Yes.

10 Q. And is that where Mr. Chavez was housed
11 during that time? Is that on the top tier or the
12 bottom too?

13 A. Top tier.

14 Q. And then Government's Exhibit 104. Do you
15 see this is the offender location history for Eugene
16 Martinez up there at the top?

17 A. Yes.

18 Q. And do you see that from February 2001
19 till June of 2001 he was also housed in Ocean 1
20 yellow pod?

21 A. Yes.

22 Q. And do you remember that Mr. Martinez was
23 housed on the top tier, as well, in Ocean 1?

24 A. Yes.

25 Q. Then I'll show you Government's Exhibit

1 87. It's the offender location history for Allen
2 Patterson. I think you identified him as Trigger.
3 Do you remember that?

4 A. Yes.

5 Q. And do you see that from January 30, 2001,
6 to March 27, 2001, he was also housed at Southern in
7 the Ocean 1 yellow pod?

8 A. Yes.

9 Q. Do you remember that he was also housed on
10 the top tier of yellow pod?

11 A. Yes.

12 Q. Do you know an inmate known as Wild Bill?

13 A. Yes.

14 Q. Do you remember him arriving at the
15 Southern New Mexico Correctional Facility in 2001?

16 A. About a week or two before Looney passed
17 away.

18 Q. And what happened when he arrived?

19 A. What happened? We were locked down for
20 the rest of our time.

21 Q. Did inmates act differently? Did the
22 environment change, in your opinion, at all?

23 A. Yes.

24 Q. Was that around the time that he arrived?

25 A. Yes.

1 Q. Did you know an inmate Leroy Lucero?

2 A. Yeah.

3 Q. Did you ever see him interact or know his
4 interactions with Rolando Garza?

5 A. Somewhat.

6 Q. And what would you say about their
7 interactions? Were they friendly, not friendly?

8 A. They got along.

9 Q. Going back to the morning of the murder,
10 when you went out to the yard, did you have your
11 shank with you?

12 A. Yes.

13 Q. What did you do with it?

14 A. I stashed it by the church after they
15 started calling us back in toward the units.

16 Q. And why did do you that?

17 A. Because I didn't want to be caught with
18 it.

19 Q. What happened when you got out to the yard
20 and you stashed your shank? What happened next?

21 A. The infirmary -- I guess they did a
22 quarter call or a unit check, whatever they want to
23 call it. They went through the unit, I guess, and
24 that's when they found Looney. All the people from
25 medical ran towards O-1. And we could hear them

1 over the radios. They were saying, "Check all the
2 units," and stuff like that, just in case somebody
3 else might have been dead or something.

4 Q. And what happened then?

5 A. They all took off running towards P-1.
6 And that's when they found Pancho.

7 Q. What happened after they found Pancho?

8 A. They started taking us all -- well, they
9 took O-1 yellow and P-1 -- I don't remember exactly
10 what housing unit it was. They had us in the yard
11 against the fences, all around the perimeter on the
12 inside by the church and stuff, and by the gym,
13 handcuffed with zip ties.

14 Q. What happened after they handcuffed you
15 and zip-tied you?

16 A. They had us kneel down facing the fence.

17 Q. At some point after that, were you then
18 taken back into a cell or a unit?

19 A. No, not for about 14 hours.

20 Q. So 14 hours in handcuffs. What happens
21 after that?

22 A. They took us to the lieutenant or
23 captain's office, and they gave us urines, you know,
24 I gave a dirty.

25 Q. Let me ask you, just so we're clear. I

1 understand that they gave you a urinalysis test?

2 A. Yeah, they gave each and every one of us a
3 urine test.

4 Q. And what happened after that?

5 A. Then they started separating us. They
6 took some of us to the gym and then they took the
7 other bunch to the chapel.

8 Q. What happened -- where did they take you?

9 A. They took me to the gym.

10 Q. What happened in the gym?

11 A. In the gym they just separated us all the
12 same way.

13 Q. What happened after they separated you?
14 Did you at some point talk to police or get locked
15 back in a cell?

16 A. They didn't do that until the beginning of
17 the morning of the next day, that I remember. I
18 remember. I'm not exactly sure.

19 Q. Sure. Were you locked back in your
20 cell -- or in a cell with Mr. Chavez, Mr. Martinez,
21 and Trigger, Mr. Patterson?

22 A. That night of the murder.

23 Q. What happened that night?

24 A. They took us back into their unit around,
25 I figure, around 7:00, 8:00. And then they put us

1 back in our cells. And when we went into our cells,
2 all our stuff was gone. The State Police had bagged
3 all our stuff. They left us with one pair of boxers
4 and a roll of toilet paper and a pair of shower
5 shoes.

6 Q. What happened that night when they locked
7 the cells down?

8 A. People were talking shit, and they were
9 talking out loud, like if nobody would keep their
10 mouth shut, they knew what would happen to them.

11 Q. Who said keep your mouth shut or you know
12 what would happen to them?

13 A. Chris Chavez.

14 Q. And then I think you said maybe the next
15 morning you were interviewed by State Police?

16 A. Yeah.

17 Q. Did you tell them the truth about what
18 you'd seen in Mr. Garza's cell that night -- or that
19 morning?

20 A. At first, I didn't, because I didn't know
21 exactly what to do. I had just been threatened, "If
22 you don't keep their mouth shut, you'll be killed,
23 too." You know what I mean? And at first I was
24 hesitant.

25 Q. At some point later did you tell people

1 what had happened?

2 A. Yes.

3 Q. And was that about a month afterwards that
4 you did that?

5 A. Yes.

6 MR. BECK: May I have a moment, Your
7 Honor?

8 THE COURT: You may.

9 MR. BECK: Pass the witness, Your Honor.

10 THE COURT: Thank you, Mr. Beck.

11 Mr. Solis, do you want to start the
12 cross-examination?

13 MR. SOLIS: I do, Your Honor.

14 THE COURT: Mr. Solis.

15 CROSS-EXAMINATION

16 BY MR. SOLIS:

17 Q. Good morning, sir.

18 A. Good morning.

19 Q. My name is Eduardo Solis. I'll ask you a
20 few questions, if that's okay with you. I noticed
21 your responses were pretty -- pretty easy to obtain
22 when Mr. Beck was asking you questions. I'm hoping
23 that the questions I ask you are just as easy to
24 come by. If I confuse you or you don't understand
25 the question, you'll ask me to clarify and I'll do

1 so, if that's okay.

2 A. All right.

3 Q. Can I have that agreement?

4 A. Yes, sir.

5 Q. So I don't want to get into the weeds
6 about your criminal history, but I do want to
7 clarify that the entirety of your criminal history
8 isn't just the judgments that Mr. Beck read off to
9 you. I suspect that there had been other -- many
10 county lockups and minor misdemeanor offenses,
11 you've been in and out of jail before you had these
12 other offenses; is that correct?

13 A. I think I've got two or three
14 misdemeanors.

15 Q. So when you went to prison, being locked
16 up was not a new experience for you?

17 A. No.

18 Q. Okay. And you've been locked up a
19 substantial number of years, I would guess?

20 A. Locked up all my life, since I was 17.

21 Q. How old are you now?

22 A. I'm 50.

23 Q. 50, five-oh? Well, then, here is the
24 question I want to ask you. Other witnesses have
25 come here and they've let it be known that in an

1 institution where you're locked down or you're
2 incarcerated, it functions like a society.

3 MR. BECK: Objection, Your Honor. This is
4 just getting around the rule. Counsel is
5 testifying.

6 THE COURT: Well, let's see what the
7 question is, first. A little bit of a warmup, but
8 let me see what the question is.

9 MR. SOLIS: Thank you, Your Honor.

10 BY MR. SOLIS:

11 Q. So would you agree with that assessment,
12 that being locked up for as long as one has, either
13 at the county lockup or other intermediate-type
14 facilities and then the state prison, after a while,
15 when you're in that sort of institutionalized
16 setting, it functions like a society, a community,
17 so to speak?

18 A. Sort of.

19 Q. And so there are -- much like in the
20 regular free world, if I could use that term,
21 society, there are certain rules and there are
22 certain expectations that you're supposed to follow?
23 Is that about right?

24 A. Yeah.

25 Q. Okay. So when you were -- well, strike

1 that. Let me ask you this. It occurs to me that
2 you're not in fear of the SNM. You're not afraid of
3 the SNM; is that about right, sir?

4 A. To a certain point.

5 Q. Well, you know, see, I've listened to your
6 interview from 2001. You met with State
7 Investigator Felipe Gonzalez, you met with Sergeant
8 Cheryl Lackey, and Detective Jim Moore. Do you
9 remember that?

10 A. Yes.

11 Q. I think that was alluded to. That was in
12 April of 2001, April 26, 2001; do you remember that?

13 A. Yes.

14 Q. And that is only a month or so removed
15 from the murders at Southern. Of course, you know
16 that; right? April 26, March 26, 2001. And in
17 listening to that recording, the audio recording,
18 you have nothing but contempt and disdain for the
19 SNM; would you agree?

20 A. What do you mean, have contempt?

21 Q. Sure. I mean, the tone of your voice, the
22 tone of your response is that you're not at all
23 afraid of them. You dislike them; you think they're
24 nothing to be afraid of. That's entirely the tone
25 of your responses to that investigator, Mr. Felipe

1 Gonzalez. Do you remember that?

2 A. I think nobody should be scared of
3 anybody.

4 Q. Right. And that was my point. In fact,
5 the testimony you gave today, Mr. Otero,
6 particularly as it refers to that you said you saw
7 Critter, Eugene, Trigger, wrestling with Looney,
8 holding him down. You said you saw that. You said
9 that today.

10 A. Yes.

11 Q. Right? You never said that on March 26,
12 2001, the date of the murders when you were
13 interviewed. You didn't say that, did you, sir?

14 A. Not that I remember.

15 Q. Okay. And on April 26, 2001, where I've
16 explained to you you had nothing but contempt and
17 disdain and no fear of the SNM, you didn't say that
18 then, either, did you?

19 A. Back then I was trying to be an abiding
20 convict.

21 Q. But you were also looking to lessen your
22 time in prison and accelerate your good-time credit;
23 isn't that also correct?

24 A. How would I do that?

25 Q. Well, you know, that's the thing. At

1 three minutes and a half of that recording
2 Mr. Gonzalez confirms that you want to give a
3 statement. He reads you your Miranda rights. And
4 as a quid pro quo -- that's something for something,
5 and we've talked about -- he wanted to make sure
6 that you're on board. And do you remember he asked
7 you that you wanted to secure early release and
8 good-time credit for your statement?

9 A. I've never been given anything for
10 anything.

11 Q. But that's what you wanted. Do you
12 remember you said that?

13 A. Maybe I probably did.

14 Q. Right. I mean, words don't lie; right?
15 Recorded words. I mean, they certainly are worth
16 more than what someone else recounts out of sheer
17 memory; correct? Well, in fact, when he asked you:
18 "Is there anything else that you want?" you were
19 silent for about 15 seconds, and then you said,
20 "Nothing." Do you remember that?

21 A. Yeah, I'd like my mother to come back from
22 the grave, too, but that ain't going to happen.

23 Q. Right. That's correct. But you did want
24 good-time credit acceleration and you wanted
25 release. What Mr. Felipe Gonzalez then prompted

1 you, he had to remind, "Oh, yeah and we need to move
2 you to another facility for security reasons; right,
3 Mr. Otero?"

4 You said, "Oh, yeah. Yeah. That, too."
5 Do you remember that?

6 A. I've never been moved to another facility.

7 Q. Well, but what you really wanted was
8 good-time credit and early release in exchange for
9 the statement that you gave in 2001, April 26.

10 A. I've never been given nothing. You can
11 look at my file.

12 Q. Then you said at about seven minutes and
13 40 seconds into that tape that there were -- I think
14 you were confused, because you said there were two
15 Looneys -- two Looneys in your pod.

16 A. There is two Looneys. There was one from
17 fucking Surenos that lived upstairs.

18 Q. At about ten minutes into the tape, you
19 discuss with Mr. Felipe Gonzalez and Sergeant Cheryl
20 Lackey about the heroin you've recounted here for
21 the jury today: How you wanted to secure heroin,
22 how you wanted to use heroin, and that you, in fact,
23 managed to get your hands on heroin. Do you
24 remember that?

25 A. Yeah.

1 Q. At about 27 minutes into that tape, I
2 heard where Mr. Felipe Gonzalez asked you, Well, if
3 he was told how they did it; that is, he asked you,
4 "Were you told how they did it?"

5 And do you remember your response was,
6 "Well, I don't know, but I heard from TV that it was
7 a strangulation."

8 So you're telling Felipe Gonzalez on April
9 26, 2001, that you don't know how it happened, but
10 the television told you it was by strangulation. Do
11 you remember you told him that?

12 A. Yes.

13 Q. You did tell him that? Okay.

14 At about 31 minutes into that
15 conversation, interrogation you had with those three
16 state investigators, it was pointedly asked of you,
17 "Do you remember, sir, whether Chris Chavez had
18 anything else to say to you?"

19 And you said, "Well, he was kind of quiet.
20 He didn't say much."

21 Do you remember that you said that at
22 about 31 minutes into that conversation?

23 A. Like I said the first time, when I was in
24 the penitentiary, I was trying to keep my name clean
25 of this bullshit.

1 Q. Then at 32 minutes, 20 seconds into that,
2 Mr. Felipe Gonzalez asked you, "Well, you didn't see
3 what took place then; right? So do you know if it
4 happened at night or if it happened in the morning?"

5 And your response wasn't it, Mr. Otero, "I
6 don't know. That's what I meant to tell you. I
7 don't know exactly when it happened or what time it
8 happened. I don't know."

9 Do you remember if that's what you said
10 back on April 26, 2001?

11 A. No.

12 Q. Okay. Then at 32 minutes and 55 seconds
13 into that conversation, Mr. Felipe Gonzalez asked
14 you, "Well, has anyone actually said to you, 'I did
15 it, I'm the one that did it'?"

16 Your response, Mr. Otero, wasn't it,
17 "Well, they just asked me a lot of questions. So
18 no, they just asked me a lot of questions."

19 Do you remember you said that?

20 A. That's all they've ever asked me is a
21 bunch of questions.

22 Q. At 46 minute into that interview it was
23 asked of you -- in fact, it was the second attempt
24 by Mr. Felipe Gonzalez to ask you if you looked into
25 Looney's cell, Mr. Garza's cell. And you made a

1 response that is in line with what you talked about.
2 "No, you don't do that. You don't look into other
3 people's houses when you're over there. That's just
4 disrespecting," is essentially what you're saying.
5 Do you remember you said that?

6 A. You ain't supposed to.

7 Q. You said today in your testimony today, 17
8 years removed from March 26, 2001, that you looked
9 up to the left and you saw someone getting killed.
10 Do you remember you said that a little while ago,
11 sir?

12 A. Right.

13 Q. That's the first time you've ever said
14 that; isn't that true?

15 A. No.

16 Q. Okay. Well, you didn't say that in the
17 April 26 recorded statement we've addressed just
18 moments ago. You didn't say that then, did you?

19 A. I've had two or three different times
20 officers have asked me about it, and I've told them
21 about what happened that day.

22 Q. Right. I know that. You did that in
23 2004, and I believe on another occasion in 2001, and
24 these were officers that interviewed you.

25 A. Yes.

1 Q. Did it appear to you these were officers
2 who were competent?

3 A. Somewhat.

4 Q. Well, they're asking you questions. They
5 asked it more than once; right?

6 A. Somewhat.

7 Q. And the interview took some time. It
8 wasn't accomplished in 10 minutes. It took a little
9 while, didn't it, sir?

10 A. Yeah.

11 Q. The testimony that you recounted for the
12 jury today, where you said you saw Critter, Eugene,
13 and Looney -- I beg your pardon, sir, Critter,
14 Eugene, Trigger holding Looney down. That's the
15 first time you said that today, isn't that true?

16 A. Yes.

17 Q. So I've listened to the audio recording of
18 your recorded statement to those three state
19 officers, detective, sergeant, and the state police
20 investigator. Then I've reviewed the written
21 materials provided from subsequent interviews or
22 interrogations with the police and investigators.
23 And you know, you've never said this before either
24 until today; isn't that true, sir? That you heard
25 some fighting or disturbance coming from banging on

1 the wall. You've never said that before today, have
2 you sir?

3 A. I have.

4 Q. Okay. And when did you say that?

5 A. The last time that they asked me in the
6 penitentiary in Los Lunas.

7 Q. Okay. And that was, again, conducted by
8 state investigators?

9 A. STIU.

10 Q. Okay. And that was a lengthy interview?

11 A. About an hour.

12 Q. Was it recorded?

13 A. Not that I remember.

14 Q. Okay. Competent investigators, STIU?

15 A. Yeah.

16 Q. Right. When you talked about the --
17 strike that. I'll go to another inquiry.

18 In listening to the lengthy recorded
19 statement you gave that we've talked about, and in
20 the subsequent reports from your 2004 and subsequent
21 interviews, you've never said that someone threw
22 something up on the roof. And then that someone
23 turned out to be Chris who threw a shoestring and a
24 mesh bag. Again, you've never said that until
25 today; is that right?

1 A. I didn't say a shoestring and a mesh bag.
2 I said either a shoestring or a mesh bag tie.

3 Q. Right. I stand corrected. But you've
4 never said that until today; is that true, sir?

5 A. Yes, I have.

6 Q. You have? And, again, to competent state
7 investigators; correct?

8 A. Yes.

9 Q. Say someone is working in the kitchen.
10 Someone is working in the kitchen, there at that
11 pod. What time do they get up to go to work, I
12 guess?

13 A. Some of them leave at 3:00 in the morning.

14 Q. Okay. How long is that kitchen duty?

15 A. That what?

16 Q. How long -- when you go to work in the
17 kitchen to prepare food, breakfast -- I hesitate to
18 call it chow -- breakfast, for y'all, how long is
19 that work duty?

20 A. Usually from like 2:00 or 3:00 o'clock in
21 the morning till 10:00.

22 Q. Okay. So if someone is working kitchen
23 duty, then that's what you're doing. You're in the
24 kitchen. You're not mopping the floor on the pod,
25 are you?

1 A. It depends if you went to work or not.

2 Q. Okay. If you go to work, you can't be two
3 places at once; right?

4 A. A lot of people do it.

5 Q. You think people can be two places at
6 once?

7 A. There's a lot of times I worked in the
8 kitchen I was back at the unit.

9 Q. At the same time?

10 A. Sure was.

11 Q. Really?

12 A. The officer would open the door, I'd go
13 back to the unit, do what I had to do.

14 Q. Just so we're clear, you're position is:
15 A person can be two places at the same time; is that
16 right?

17 A. No, not at the same time.

18 Q. That's what I'm asking. Do you think a
19 person can be two places at the same time?

20 A. No.

21 Q. Okay. So if you've got kitchen duty, then
22 you can't be mopping the floor at the pod; is that
23 right?

24 A. Sure.

25 MR. SOLIS: Could I have a moment, Your

1 Honor?

2 THE COURT: You may.

3 MR. SOLIS: Pass the witness, Your Honor.

4 THE COURT: Thank you, Mr. Solis. Any
5 other defendants have cross-examination of
6 Mr. Otero?

7 MR. SHATTUCK: Yes, sir.

8 THE COURT: Mr. Shattuck.

9 MR. SHATTUCK: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 CROSS-EXAMINATION

13 BY MR. SHATTUCK:

14 Q. Mr. Otero, do you recognize anybody in
15 this photograph. Don't say who it is.

16 A. Yeah.

17 MR. SHATTUCK: Your Honor, I'm not going
18 to use it right now, but without objection, I'd like
19 to move for admission of Defendants' Exhibit AU.
20 It's Bates stamp 12504?

21 THE COURT: Any objection, Mr. Beck?

22 MR. BECK: No objection.

23 THE COURT: Any objection of any other
24 defendant? Not seeing or hearing any, Defendants'
25 Exhibit AU will be admitted into evidence.

1 (Defendants' Exhibit AU admitted.)

2 BY MR. SHATTUCK:

3 Q. Mr. Otero, you gave a statement to -- you
4 gave several statements after Mr. Garza's body was
5 found, didn't you?

6 A. Yes.

7 Q. You gave a statement to Felipe Gonzalez
8 about 1:30 in the afternoon on the 26th of March,
9 2001, didn't you?

10 A. That I remember, yeah.

11 Q. And then you gave another one to him a
12 couple of days later; is that correct?

13 A. I think so.

14 Q. And then you gave another one to him, a
15 long one, that lasted about 49 minutes, on the --
16 exactly a month after Mr. Garza was killed, on the
17 26th of April, didn't you?

18 A. Yes.

19 Q. That's the one that Mr. Solis was talking
20 to you about. And in that interview you indicated
21 it was pretty clear from the very beginning of the
22 interview that you were giving that interview to
23 reduce your sentence, shorten your time. You wanted
24 a shorter amount of time. I know you say you never
25 got it. But that's what you wanted, wasn't it?

1 A. It was possible.

2 Q. And I know you say you never got this, but
3 you wanted to be transferred to another facility.

4 A. Yes.

5 Q. Now, you've told us here yesterday and a
6 couple of other times that you were not a member of
7 SNM; is that correct?

8 A. Yes.

9 Q. Yet as far back as 1989, you were being
10 investigated as a member of SNM, when Lorenzo Mora
11 was picked up with a shank on his way to do a hit,
12 and then you were in the day room saying that you
13 were going to go do that hit. And that was in 1989,
14 wasn't it?

15 A. Yes.

16 Q. And then on March -- the very month that
17 Mr. Garza was killed, in March of 2001, March 7th of
18 2001, you were identified by Special Agent Pedersen
19 of the FBI and members of the STIU unit as a member
20 of SNM who could be counted on to help them out; you
21 had a lot of information. Isn't that --

22 MR. BECK: Objection, foundation.

23 Q. Are you aware of that?

24 THE COURT: I think he's trying to lay a
25 foundation. So overruled.

1 Q. Are you aware of that, of that delineation
2 that you were SNM and could help them because you
3 had a lot of information?

4 A. No.

5 Q. We'll see that later, then. May we see
6 Defendants' Exhibit AU, please? Mr. Otero, do you
7 recognize the people in this photograph?

8 A. Yes, that's Looney from the Surenos.

9 Q. Hang on a second. Is this the Looney that
10 you're talking about?

11 A. No, that's Lorenzo Mora, Jr.

12 Q. Which one is Looney from Sureno?

13 A. The one on the far left.

14 Q. Felix Reyes?

15 A. Yes.

16 Q. And this is Lorenzo Mora; is that correct?

17 A. Yes.

18 Q. And we know he's SNM; correct?

19 A. At the time he was.

20 Q. And this is Frank Castillo. That's
21 Pancho. That was the victim in the other cell
22 block; is that correct?

23 A. Yes.

24 Q. And at the time, he was SNM; is that
25 correct?

1 A. (Witness nods.)

2 Q. And this is you?

3 A. Yeah.

4 Q. And this is one of those photos we've
5 heard about being taken in the yard?

6 A. Yeah.

7 Q. Thank you. Now, you told us yesterday
8 that you knew Mr. Garza from high school; is that
9 correct?

10 A. Yeah.

11 Q. But in 2001, when you did the interview
12 with -- you did the really long interview with
13 Francisco Gonzalez, you told him that Garza was just
14 an associate; that you -- he asked you, was he your
15 friend, did you know him from the past, or just an
16 associate in the pen? You said, "Oh, no, he's just
17 an associate from the pen"; is that correct?

18 A. He's just an associate from the pen. I
19 knew him in high school, but that didn't mean I was
20 kicking with him then.

21 Q. Now, during your -- that testimony that
22 day, you told, during the statement that day, when
23 you were trying to get your time reduced and try to
24 get changed to another facility, where you told
25 these cops you were going to tell them the truth;

1 right?

2 A. Yeah.

3 Q. And you told those officers that you
4 didn't see anybody hurt Mr. Garza, that you heard
5 about it afterwards; is that correct?

6 A. No.

7 Q. All right.

8 MR. SHATTUCK: Your Honor, at this time I
9 would like to play CJ-1 or move for the introduction
10 of CJ-1. It's the tape of that interview from March
11 26, 2001. I'm going to start out by making sure
12 that it's Mr. Otero.

13 THE COURT: Any objection, Mr. Beck?

14 MR. BECK: Yes, Your Honor. It's hearsay.
15 I don't have a problem with it being played for
16 impeachment, if that's what they're doing with it,
17 but it should not come into evidence.

18 MR. SHATTUCK: I'm going to play it for
19 impeachment.

20 THE COURT: All right. Let me instruct
21 the jury that they're not to consider the statements
22 they're going to hear on this tape for the truth of
23 the matter. You can only consider it to determine
24 whether Mr. Otero is being truthful on the stand
25 right this minute. So you can't consider the

1 statements you're about to hear for the truth of the
2 matter asserted.

3 All right, Mr. Shattuck.

4 MR. SHATTUCK: Thank you, Judge.

5 (Tape played).

6 BY MR. SHATTUCK:

7 Q. Is that the interview that you did with
8 Felipe Gonzalez?

9 A. Sounds like it. But I don't hear me
10 saying anything.

11 Q. We're going to get to that. Could we go
12 to time stamp around 540, please?

13 (Tape played.)

14 Q. Did you hear yourself say, "I didn't see
15 nobody hurt him"?

16 A. Yeah.

17 Q. So what you told me just a minute ago
18 wasn't the truth, was it?

19 A. Yeah.

20 Q. You did say that, didn't you?

21 A. I did say that.

22 Q. And you also said that you didn't even
23 know what happened to him; that you heard about it
24 on television. You told them that, too, didn't you?

25 A. Yeah, because at the time I was trying to

1 be a convict.

2 Q. No, you weren't. Weren't you trying to
3 get lesser time and get moved and get yourself out
4 of the penitentiary because you were tired of being
5 an inmate and you wanted to go home, so you were
6 trying to tell them the truth. That's what you told
7 them you were going to do, wasn't it?

8 A. I didn't get shit out of it. And I still
9 ain't got shit out of it. So I don't know why
10 you're trying to put something there that wasn't
11 there.

12 Q. Because you're not telling the truth,
13 that's why.

14 A. That's bullshit.

15 Q. Did you tell Felipe Gonzalez on that day
16 that -- the day of the long statement that Eugene
17 was putting himself out, letting everybody know that
18 it was him that did it, and he was telling
19 everybody, "Stay strong; don't do anything." He was
20 even asking you about evidence, about DNA, and that
21 kind of thing?

22 A. Yeah.

23 Q. And you also told him that you didn't know
24 when this happened, and you didn't know how it
25 happened. Because they asked you, Was it in the

1 morning or at night? And you said, "I don't know
2 when or how it happened."

3 You told them that, didn't you?

4 A. Yeah. I was trying to keep myself out of
5 it.

6 Q. Okay. We already know that you had been
7 identified as somebody who could help the
8 authorities with SNM. You were trying to get your
9 time shortened, you were trying to get out early,
10 you were trying to get back with your family. But
11 now you're telling us that you're trying to be a
12 good convict?

13 A. At that time I was.

14 Q. The first time that you told anybody that
15 wrote it down or could hear it or was of any
16 importance that you went and got a shank was today;
17 isn't that correct?

18 A. No.

19 Q. It's not in any police reports. It's not
20 in any 302s from the FBI. And when you talked to
21 the authorities, they write it all down, don't they?

22 A. Not all of them.

23 Q. What? They make it up? They just leave
24 you there?

25 A. No, they either recorded it or they

1 listened to what I had to say.

2 Q. So if it's not written down, it didn't
3 happen; right?

4 A. What do you mean, if it wasn't written
5 down?

6 Q. It's pretty plain. Now, when -- the first
7 time you ever told anybody about seeing Critter
8 throw anything on the roof was today. No one ever
9 wrote that down. No one ever recorded it. The
10 first time you ever told anybody that where it meant
11 anything was today; isn't that correct?

12 A. Nobody has ever paid no attention to what
13 the fuck I told them.

14 Q. Maybe there is a reason, huh?

15 Do you recall telling Felipe Gonzalez and
16 the other people, Jim Moore and Cheryl Lackey, that
17 were there at that interview -- the interview is
18 almost over; then you tell them, "I tried to tell
19 you at the beginning I don't know where it happened,
20 I don't know when it happened, or what happened to
21 him. I just heard wrestling and shuffling around
22 that night, 8:00, the last time I saw him." Do you
23 remember saying that?

24 A. I heard a scuffling at 5:00 in the fucking
25 morning.

1 Q. Okay.

2 THE COURT: Mr. Shattuck, would this be a
3 good place for us to take our morning break?

4 MR. SHATTUCK: Sure.

5 THE COURT: All right. We'll be in recess
6 for about 15 minutes. All rise.

7 (The jury left the courtroom.)

8 THE COURT: All right. We'll be in recess
9 for about 15 minutes.

10 (The Court stood in recess.)

11 THE COURT: We're going to go ahead and
12 line up the jury. Anything we need to discuss?

13 Mr. Beck, can you give me the 302 that
14 Mr. Solis -- is the subject of his motion? And also
15 I think here at the bench you mentioned one or two
16 earlier 302s; is that correct?

17 MR. BECK: I think for Mr. Otero there is
18 just that one 302. There is a second 302 that just
19 came out yesterday, and it was disclosed today.

20 THE COURT: So there's just two, but there
21 wasn't one before the one that Mr. Solis filed the
22 motion on?

23 MR. BECK: No, I was referring to the
24 April 2001 interview that they've been discussing
25 with the jury just now.

1 THE COURT: And that -- the date of that
2 is April 2001. Okay. Do I have somewhere in the
3 record that interview?

4 MR. BECK: You mean, do you have a copy of
5 it? I'm sure that you do from probably one of the
6 motions to dismiss. But we'll get you another copy
7 of it.

8 THE COURT: Or if you just know where it
9 is in the record, or if you can give me another one,
10 if you'd give it to Ms. Bevel.

11 MR. BECK: And Mr. Solis was correct,
12 there were no notes for that 302, but the agent did
13 not have any notes. She just wrote the 302.

14 THE COURT: She went straight to a 302?

15 MR. BECK: Right.

16 THE COURT: And that interview was done on
17 March 21 with the 302 being prepared on the 22nd?

18 MR. SHATTUCK: Yes, I have it here.

19 MR. BECK: Yes.

20 THE COURT: And the reason for it not
21 being produced on the 26th?

22 MR. BECK: As far as I know, we did not
23 get it until April, when we produced it.

24 THE COURT: By "us" meaning the
25 prosecutors?

1 MR. BECK: Yes.

2 THE COURT: All rise.

3 (The jury entered the courtroom.)

4 THE COURT: All right. Everyone be
5 seated.

6 All right. Mr. Otero, I'll remind you
7 that you're still under oath.

8 Mr. Shattuck, if you wish to continue your
9 cross-examination of Mr. Otero, you may do so at
10 this time.

11 MR. SHATTUCK: Thank you, Your Honor.

12 THE COURT: Mr. Shattuck.

13 EXAMINATION

14 Q. Mr. Otero, you testified earlier that you
15 guys were on your knees handcuffed with cable ties,
16 zip-ties, whatever they call them?

17 A. Yes.

18 Q. And you were out there for 14 hours or so?

19 A. Close to 14 hours.

20 Q. What time did you go out there? They
21 discovered the body at 8:00, so --

22 A. I'd say about -- around 8:30.

23 Q. And then you were out there for 14 hours?

24 A. I figure around 8:30, maybe 8:00.

25 Q. Then you're out 14 hours, then they

1 separated you, or part of that --

2 A. They separated us during --

3 Q. -- during the 14 hours. And then the
4 whole pod went back to O-1 yellow?

5 A. Yeah.

6 Q. Everybody who lived there went back?

7 A. They walked us back, I remember, yeah.

8 Q. Is that when you heard Allen Patterson
9 talking to you?

10 A. Allen Patterson? Yes.

11 Q. So it was after you went back?

12 A. Yeah.

13 Q. I want to make sure of that. That's when
14 you heard Allen Patterson talking, was after you
15 went back to the cell?

16 A. I think he might have talked to me while I
17 was in the gym. He wasn't in the gym, so it
18 couldn't be.

19 Q. I don't think he was in the gym. So
20 could -- it would have to be back then; right?

21 A. They had them all moved together. How
22 could we not be at the same place?

23 Q. The point being, you went back that night;
24 correct?

25 A. Yes.

1 Q. And you told us earlier that all the guys
2 were yelling at you when you got back to the cell?
3 They were telling you to keep your mouth shut.

4 A. They weren't yelling at me. Just talking
5 loud, and people were just talking to each other.

6 Q. All right. And you're sure you heard
7 Allen Patterson?

8 A. Yes.

9 Q. Do you remember talking with FBI Agent
10 Lacia Lopez Richie on the 21st of March 2018?

11 A. Yes.

12 Q. And she did a little report on it?

13 A. Yeah.

14 Q. You never told her that you went and got a
15 shank, did you?

16 A. I told her I went to the shower for
17 something.

18 Q. You never told her that you saw Chris
19 Chavez throw something on the roof, did you?

20 A. Yes, I did.

21 Q. You never told her that Allen Patterson
22 threatened you, did you?

23 A. No.

24 Q. As a matter of fact, in that statement
25 that you gave to Felipe Gonzalez on the 26th of

1 April, 2001, you told him that Allen Patterson stuck
2 to himself and he was a loaner, didn't you?

3 A. He was always by himself, most of the
4 time.

5 Q. And you didn't bother to mention that to
6 Agent Richie, did you?

7 A. It never came across.

8 MR. SHATTUCK: I don't have any further
9 questions.

10 THE COURT: Thank you, Mr. Shattuck.

11 Any other defendant have
12 cross-examination. Mr. Cooper?

13 MR. SHATTUCK: Thank you, Your Honor.

14 THE COURT: Mr. Cooper. I'm sorry, I
15 thought --

16 MR. SINDEL: We both got up at the same
17 time.

18 THE COURT: Mr. Sindel.

19 MR. COOPER: He's older than I am. So
20 respect.

21 THE COURT: I hope I don't have to make a
22 fact-finding on that.

23 MR. SINDEL: Oh, sweet mystery.
24
25

1 CROSS-EXAMINATION

2 BY MR. SINDEL:

3 My name is Richard Sindel. How are you
4 today?

5 A. I'm doing all right.

6 Q. Good morning. Can you hear conversations
7 that are occurring in the blue pod from the yellow
8 pod?

9 A. Not much.

10 Q. Can you hear noises, for the most part, in
11 the blue pod from the yellow pod, or vice versa?

12 A. No.

13 Q. And you can't see into the yellow pod from
14 the blue pod; correct?

15 A. No.

16 Q. I also think you said that you were on
17 lockdown after evening or nighttime count, which is
18 around 10:30; is that right?

19 A. Yes.

20 Q. And that you then -- around 6:30 is when
21 they popped the cells; is that right?

22 A. 5:30, 6:00.

23 Q. 5:30 or 6:00? And of course, if they had
24 logs that suggested it was somewhere closer to 6:00
25 or 6:30, you wouldn't have any reason to dispute

1 that, would you?

2 A. No.

3 Q. Now, the Government showed you Exhibit 93.

4 Could we have that, please?

5 You could read and write the English
6 language; right?

7 A. Yes.

8 Q. Can you read the person's name you
9 identified?

10 A. Chris Chavez.

11 Q. So his name is right there on the
12 photograph, isn't it?

13 A. What?

14 Q. His name is on the photograph you
15 identified; right?

16 A. Yeah, I've known him.

17 Q. And it was the same on the other
18 photographs you identified; right? They all had
19 their names right there for you to read.

20 A. I know exactly who they are.

21 Q. They all had their names right there on
22 the photograph for you to read.

23 A. Yes.

24 Q. So it wasn't much of a test for you to say
25 who it was, was it?

1 A. No.

2 Q. You also had talked a little bit about
3 using heroin with Mr. Garza that evening; is that
4 right?

5 A. Yes.

6 Q. At that time, in March of 2001, were you
7 addicted to heroin?

8 A. I used to get high.

9 Q. I'm sorry, you used to get high? I'm
10 asking you: Were you addicted to heroin?

11 A. I've been addicted to heroin since I was
12 14.

13 Q. So just like from the time you were 14
14 until the present, you've been a heroin addict
15 except for the more -- most recent time?

16 A. Yes.

17 Q. And is it true that if you're addicted to
18 heroin, the first thing you want to do in the
19 morning is get your fix; is that true?

20 A. Right.

21 Q. You don't want to start feeling bad, do
22 you?

23 A. No.

24 Q. So would it be fair to say that the first
25 thing that you wanted to do when you got up was to

1 see if you could locate someone with heroin or use
2 heroin yourself?

3 A. I had some myself.

4 Q. So you could use what you had in your
5 cell; is that right?

6 A. Yes.

7 Q. And is it your normal practice, then, when
8 you get up, to hit the heroin?

9 A. It depends if you want to do a shot or
10 not. I already had did a shot earlier.

11 Q. "Earlier" being that night?

12 A. Yeah.

13 Q. With Mr. Garza?

14 A. Yes.

15 Q. How long does that fix last?

16 A. About eight hours, ten hours.

17 Q. All right. So that by the time that you
18 woke up, it was over?

19 A. I never slept.

20 Q. You never slept. You stayed awake all
21 night?

22 A. I never slept. Not enough.

23 Q. Now, when you were discussing with
24 Mr. Beck your prior convictions, do you remember
25 that?

1 A. Yeah.

2 Q. And he was going through the attempted
3 murder in the first degree, the fact that you
4 violated your parole, and there was one conviction
5 for delinquency with a minor; is that right?

6 A. Yeah.

7 Q. And that's when you took your minor son
8 with you in order to commit a crime?

9 A. Yeah.

10 Q. He was supposed to drive the getaway car
11 or something?

12 A. Yeah, he's my 17-year-old son.

13 Q. Is that part of your teaching experience
14 with him, teach him how to do these crimes so he
15 could end up in the penitentiary like you did?

16 A. He can take whatever role he wanted.

17 Q. Well, I'm just asking; you said to us that
18 you've been basically locked up your whole adult
19 life; right?

20 A. Yes, I have.

21 Q. And you were teaching your son the same
22 activities; correct?

23 A. Get a quick buck.

24 Q. I'm sorry, what?

25 A. Get a quick buck.

1 Q. To get a quick buck. Good idea.

2 When you went to the gym, and you said
3 that you guys were handcuffed, did they strip-search
4 you guys?

5 A. Did they what?

6 Q. Did they search you, your body?

7 A. Yeah.

8 Q. Did they make you take your clothes off or
9 some of your clothes off; correct?

10 A. Yeah.

11 Q. They basically wanted to check to see if
12 there were any wounds or injuries on you; right?

13 A. Yes.

14 Q. And the entire staff was in a position to
15 search you and to make a determination if you had
16 injuries to your hands, your legs, anywhere on your
17 body; correct?

18 A. Yes.

19 Q. And if they wanted to, they could
20 photograph you; correct?

21 A. Yes.

22 Q. At one point in time they asked you some
23 questions about whether on March 26, the date of
24 this incident, that you made any statements and you
25 said you were trying to be a good convict. Do you

1 remember that?

2 A. I was trying to be who I was.

3 Q. You were trying to be a good convict.

4 That's what your words were; right?

5 A. Yes.

6 Q. Right?

7 A. Yes.

8 Q. And in terms of being a good convict,
9 there basically is a code that you learn pretty
10 quickly when you're in prison.

11 A. Yeah.

12 Q. And that code is: You don't tell on
13 anybody; right?

14 A. Exactly.

15 Q. No matter whether you're an SNM, whether
16 you're Los Burquenos, no matter -- you may or may
17 not even join a gang; the good convict code is: You
18 don't tell on anybody.

19 A. Exactly.

20 Q. Because if you tell on people, no one
21 wants to be around you; correct?

22 A. Exactly.

23 Q. And if you tell on people, you might end
24 up being injured or targeted; right?

25 A. Exactly.

1 Q. Regardless of whether you're in a gang;
2 right?

3 A. Yes.

4 Q. It's just part of the code.

5 A. Yes.

6 Q. I think you said you were trying to keep
7 yourself out of it; right?

8 A. Yeah.

9 Q. But within 30 days, you were wanting to
10 get into it so you could see if you could get back
11 out and resume schooling your son.

12 A. If I can get out and do whatever I got to
13 do, because I knew I would be coming back soon.

14 Q. You wanted to get out as soon as you
15 could; right?

16 A. Yeah.

17 Q. Now, during the time that you've been
18 locked up on this case, have you had the tablet?

19 A. What?

20 Q. A tablet?

21 A. A tablet?

22 Q. Have you had the discovery?

23 A. What the hell is a tablet?

24 Q. You know, a computerized device?

25 A. Never used one.

1 Q. Did you have any of the statements that
2 you'd given to the police?

3 A. No.

4 Q. I'm sorry, what?

5 A. No.

6 Q. Did you have any statements given to the
7 FBI or any other law enforcement?

8 A. What do you mean, have I had any
9 statements?

10 Q. Have you had them in your possession?

11 A. No.

12 Q. No. Is that your answer?

13 A. Yeah.

14 Q. So you never had a tablet?

15 A. No. I've never even owned one. I don't
16 know what it is.

17 Q. Did anybody from law enforcement or anyone
18 else from the Marshal Service give you a tablet?

19 A. (Witness shrugs.)

20 Q. Is that a no?

21 A. No.

22 Q. Now, I think you also said that nobody
23 ever paid any attention to what you told them; is
24 that right?

25 A. Yeah.

1 Q. Do you remember that? Did you ever at any
2 time say, "Look, you guys have left things out that
3 I told you"?

4 A. Yes.

5 Q. And who did you say that to?

6 A. I told that to Mr. -- the officer.

7 Q. Mr. Acee?

8 A. His -- what's her name? Lacia?

9 Q. Nancy Stemo?

10 A. Lacia.

11 Q. And when did you tell her, "Look, you guys
12 have left out this really important stuff I told
13 you"?

14 A. I told her that Archuleta had left out a
15 lot of stuff in my statement.

16 Q. Did she ever say to you, "Let's sit down
17 and see if we can clear that up"?

18 A. I thought that's what she was doing.

19 Q. You thought she was doing it? Was she
20 taking notes when she was talking to you when you
21 said, "Look, you left stuff out"?

22 A. I think she was.

23 Q. Okay. So those notes -- theoretically,
24 they'd still be available; right?

25 A. They should.

1 Q. Yeah. When you cleaned all this stuff up;
2 right?

3 A. Yeah.

4 Q. Correct? When was it that you sat down
5 and talked with her in order to clear up the fact
6 that they hadn't paid attention to you earlier?

7 A. At least a month or so ago.

8 Q. So it would have been within, let's say,
9 April, March?

10 A. I don't know exactly when, but yeah, it
11 was in Hobbs, New Mexico.

12 Q. And where were you at?

13 A. Hobbs.

14 Q. And she came to see you there?

15 A. Yeah.

16 Q. How long did that interview last?

17 A. Thirty, forty-five minutes.

18 Q. And as far as you know, was it recorded?
19 Did she have a tape recorder or a digital recorder?

20 A. Not that I noticed.

21 Q. So it was just her taking notes?

22 A. Yeah.

23 Q. I want to ask you if you remember being
24 interviewed by Tammy Archuleta. Do you know who she
25 is?

1 A. Yeah.

2 Q. She's the STIU coordinator; is that right?

3 A. Yes.

4 Q. Do you remember being interviewed by her
5 on June 16, 2004?

6 A. Yes.

7 Q. And at that interview, did you tell her --
8 well, let me rephrase that. Playboy Munoz. Who was
9 that?

10 A. Who?

11 Q. Playboy Munoz. I'm not from here, so if I
12 pronounce it bad, you correct me. M-U-N-O-Z,
13 Frederico?

14 A. Freddie.

15 Q. Is that his nickname, Playboy?

16 A. Yeah.

17 Q. And did you tell her that there was a
18 green light on Joe Gallegos?

19 A. From what I heard.

20 Q. And they told you that he was subject to
21 being hit; correct?

22 A. Yes.

23 Q. And that the green light was put on him by
24 Playboy?

25 A. Yes.

1 MR. SINDEL: That's all I have.

2 THE COURT: Thank you, Mr. Sindel.

3 Mr. Cooper, did you have something?

4 MR. SINDEL: Your Honor, I have one more
5 question.

6 THE COURT: You may.

7 MR. SINDEL: I'm sorry.

8 BY MR. SINDEL:

9 Q. When you were answering questions, you had
10 said that you heard the scuffling in the cell that
11 Mr. Garza was in at 5:00 in the morning; right?

12 A. 5:00, 5:30, around there.

13 Q. You said 5:00; right?

14 A. 5:00, 5:30, around there.

15 MR. SINDEL: That's all I have.

16 THE COURT: Thank you, Mr. Sindel.

17 Mr. Cooper.

18 MR. COOPER: May I have a moment, Your
19 Honor?

20 THE COURT: Certainly.

21 MR. COOPER: May it please the Court.

22 THE COURT: Mr. Cooper.

23 MR. COOPER: Thank you, Judge.

24

25

1 CROSS-EXAMINATION

2 BY MR. COOPER:

3 Q. Mr. Otero, my name is Bob Cooper. I
4 represent Billy Garcia, and I, too, want to ask a
5 few questions of you.

6 So you went to Southern New Mexico
7 Correctional Facility in June of 2000; isn't that
8 correct?

9 A. I think that was the date.

10 Q. And you're not an SNM member?

11 A. No.

12 Q. But you were a member of Los Padilla
13 street gang?

14 A. Yes.

15 Q. Where is Los Padilla? Is that --

16 A. South Valley.

17 Q. South Valley?

18 A. Yes, the reservation.

19 Q. It's, like, almost as far south as you can
20 go and still be in the city and county of Bernalillo
21 and it's bounded on the south side by I-25?

22 A. Yes.

23 Q. On the other side of I-25 is Isleta
24 Pueblo?

25 A. Yeah, the reservation.

1 Q. So it's north of I-25 in that
2 neighborhood?

3 A. Yeah.

4 Q. Did you grow up in Los Padillas?

5 A. I've been there all my life.

6 Q. Okay. You've known Leroy Lucero, also
7 known as Smurf, since you were kids; right?

8 A. No.

9 Q. When did you meet Leroy?

10 A. I met Leroy when I was in the penitentiary
11 in Cruces, or maybe at the South facility.

12 Q. And how old were you when you were at the
13 South facility?

14 A. I've been in there a mess of times. I
15 think I was 25 the first time I was there.

16 Q. Okay. But you've known Smurf for a long
17 time, since you first got to the penitentiary?

18 A. Yes.

19 Q. And so when you first got there, you were
20 probably a kid?

21 A. Yeah.

22 Q. Okay. And he was a kid, as well; so
23 you've known him for many, many years?

24 A. Yes.

25 Q. Now, Leroy Lucero was an SNM member;

1 correct?

2 A. Yes.

3 Q. And in fact, he was a leader of the SNM
4 and was a leader while he was at Southern New Mexico
5 Correctional Facility; right?

6 A. I don't know how high up he is, but I know
7 he's up there.

8 Q. And he trusted you?

9 A. Somewhat.

10 Q. Okay. And he let you listen to some SNM
11 conversations, didn't he?

12 A. Yeah. Some of the brothers didn't like
13 that.

14 Q. Okay. So if he let you listen to them, he
15 probably trusted you?

16 A. Somewhat.

17 Q. What is a rat jacket?

18 A. A rat jacket is if you tell on somebody.

19 Q. Then you're known as a rat?

20 A. Yeah.

21 Q. And people -- it's not really a jacket, is
22 it?

23 A. No. It's just something some people put
24 on you.

25 Q. You knew that Looney had a rat jacket on

1 him, didn't you?

2 A. No, not that I know of.

3 Q. You didn't know that?

4 A. I had heard stuff, but I didn't know
5 exactly what was up with him.

6 Q. But you had heard that he had a rat jacket
7 on him, hadn't you?

8 A. Somewhat.

9 Q. Somewhat. You knew that he had -- well,
10 let me back up. Do you remember giving a statement
11 on June 16, 2004, to individuals at Southern New
12 Mexico Correctional Facility to include maybe Tammy
13 Archuleta, the STIU coordinator? Do you remember
14 talking to Tammy?

15 A. Um-hum.

16 Q. That's a yes?

17 A. Yes.

18 Q. And do you remember telling Tammy that
19 inmate Garza had a rat jacket on him?

20 A. I don't know if it was a rat jacket. I
21 had heard that he was in another clique.

22 Q. Okay. You had heard he was an LC; right?

23 A. From the two different cliques, yeah.

24 Q. You can't be a member of Los Carnales and
25 a member of the S; right?

1 A. No.

2 Q. You can't do that?

3 A. No.

4 Q. You can't do it at the same time. You
5 can't go from one to the other, either, can you?

6 A. No.

7 Q. So you knew he had problems because he had
8 previously been an LC, and was trying to be an S?

9 A. From what I heard, yes.

10 Q. And you told that to Tammy?

11 A. Yes.

12 Q. So you knew that there was a green light
13 on Looney because of that; right?

14 A. Somewhat. I didn't know how far it went
15 or whatever.

16 Q. You know that -- or a little while ago you
17 testified that Smurf and Looney got along okay;
18 right?

19 A. A little while ago. This is the first
20 I've ever talked to anybody about it.

21 Q. But today you told the ladies and
22 gentlemen of the jury that Smurf and Looney got
23 along okay.

24 A. Yes.

25 Q. Is that true?

1 A. They got along all right.

2 Q. They got along all right? But isn't it
3 true that every time that Smurf was around Garza,
4 he, Smurf, got really nervous and really anxious,
5 and he wanted to take Garza out himself?

6 A. I never noticed that.

7 Q. You never noticed it?

8 A. No.

9 Q. Do you remember giving a statement to
10 Tammy Archuleta back in June of 2004?

11 A. Yeah. I remember they used to just -- he
12 just used to aggravate him.

13 Q. Pardon me?

14 A. He used to get aggravated.

15 Q. He used to get aggravated?

16 A. Yeah.

17 Q. And to the point where he wanted to take
18 Garza out himself; right?

19 A. I don't know if he wanted to take him out,
20 but I know he was pissed off with him.

21 Q. Okay. If I were to show you the document
22 that Tammy Archuleta wrote, would that refresh your
23 recollection as to whether or not you said that
24 about him?

25 A. Yeah.

1 MR. COOPER: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. COOPER:

4 Q. So after having looked that this report
5 that was prepared right after you had a discussion
6 with Tammy Archuleta, isn't it true that you told
7 her that Garza was really nervous around him as
8 inmate Lucero wanted to take out Garza himself?

9 A. Yes.

10 Q. So a minute ago you said that you weren't
11 sure that he was, Lucero, Smurf, was really a
12 leader. When you read this, did that refresh your
13 recollection as to whether or not he was a leader at
14 the time?

15 A. I don't know how -- I hope he was, like I
16 say. All I know is that he was somebody a lot of
17 vatos talked to.

18 Q. So you had the impression, didn't you,
19 that Smurf wanted to take Garza out?

20 A. Yes.

21 Q. And who is Jim Moore?

22 A. He's the STIU --

23 Q. He's the STIU coordinator?

24 A. Or STG at that time.

25 Q. STG at the time. And STG -- tell me who

1 STG officers are.

2 A. They're like a gang force.

3 Q. The gang force? So they're real active in
4 trying to learn who the gangs are and who is in the
5 gang, that sort of stuff?

6 A. Yes.

7 Q. And they want to try to control the gang
8 so it doesn't get too big and get out of control,
9 that sort of stuff?

10 A. Yes.

11 Q. And anytime that there was a problem,
12 isn't it true that Jim Moore would go talk with
13 Smurf and with T Bone, and then Smurf and T Bone
14 would squash any problems in the compound?

15 A. Somewhat, yeah. Yes.

16 Q. Okay. I mean, that's what you told them;
17 right?

18 A. Yes.

19 Q. And that Smurf and T Bone would keep the
20 youngsters of SNM in line; right?

21 A. Yeah.

22 Q. So they'd squash any problems that were
23 going on. If Jim Moore had a problem with the S, he
24 would go to Smurf and say, "Hey, control the boys";
25 Smurf would control the boys; right?

1 A. Yes.

2 Q. That sounds to me like a leader. Doesn't
3 it to you?

4 A. Yeah.

5 Q. I mean, he wouldn't go to anybody else at
6 the S; he would go to Smurf; right?

7 A. Right, he went to certain one.

8 Q. Yeah, to certain ones.

9 Mr. Otero, on your screen there's a
10 photograph that has been marked and admitted as
11 Defendants' Exhibit AU for identification purposes.
12 A minute ago you talked about that photograph, and
13 you said that on the left side was Felix Reyes;
14 right?

15 A. Yes, Looney.

16 Q. Felix Reyes was also named Looney?

17 A. Yes, from Surenos.

18 Q. And so was Garza; right?

19 A. Yes.

20 Q. So there were two Looneys. And they were
21 even in the same pod, weren't they?

22 A. Yes.

23 Q. So Felix Reyes was in O-1 yellow?

24 A. Yes.

25 Q. The person next to him, that taller man,

1 his name is Lorenzo Mora?

2 A. Yes.

3 Q. And Lorenzo was also in O-1 yellow; right?

4 A. Yes.

5 Q. What about Frank Castillo? Where was he?

6 A. P-1.

7 Q. He was in P-1 next door; right?

8 A. Yes.

9 Q. And then you're on the end?

10 A. Yeah.

11 Q. So Mr. Otero, the top left-hand corner of

12 this exhibit, Exhibit 75 that's on your screen --

13 that would be the yellow pod; right?

14 A. Left top?

15 Q. Top left-hand corner is yellow?

16 A. Yes.

17 Q. And the cell that's under that staircase

18 that I made a red mark on -- that was cell 1119;

19 correct?

20 A. Yes.

21 Q. And that's where you lived?

22 A. Yes.

23 Q. That was your house?

24 A. Yes.

25 Q. Next to your house was 1118; correct?

1 A. Yes.

2 Q. And Looney lived there; correct?

3 A. Yes.

4 Q. And that's Looney, Rolando Garza?

5 A. Rolando Garza.

6 Q. Okay. Do you remember who is in the next
7 cell?

8 A. I think it was Spider.

9 Q. Spider. What's his real name?

10 A. That I don't know. I don't remember.

11 Q. Okay.

12 A. I know that he was from Pajarito.

13 Q. So you think the next one was Spider. And
14 that would be 1117?

15 A. Yeah.

16 Q. And then 1116 was Smurf; right?

17 A. Yes.

18 Q. And Smurf is Leroy Lucero?

19 A. Yes.

20 Q. Leroy Lucero, the leader, who Jim Moore
21 would go to when he had problems with the S; right?

22 A. Yes.

23 Q. And then Leroy Lucero would go to the S,
24 "Come on, guys, calmaste, settle down"; right?

25 A. Yeah.

1 Q. Do you remember who were in the cells on
2 top of this diagram? We have the shower over in the
3 corner; right?

4 A. Yes.

5 Q. Who was next to the shower?

6 A. That was Critter's house, Chris.

7 Q. Okay. Critter's house is there. And then
8 who was next to Chris?

9 A. I think the next house was Huero's,
10 Eugene.

11 Q. Eugene?

12 A. Eugene.

13 Q. Okay. And next to him?

14 A. That was Trigger's.

15 Q. And this is all on the bottom floor?

16 A. No, that's the top.

17 Q. This is the top?

18 A. That's the top. Bottom tier was me,
19 Looney, Spider, Leroy.

20 Q. Smurf. Okay.

21 A. Chacon was in the second one over, and
22 Jesse Ibarra was next door on the other side. I
23 can't remember who was in the other two cells.

24 Q. Tell me again, who is next to the shower?

25 A. I can't remember exactly who that was.

1 But the next one was Chacon. That one or the next
2 one was Chacon's.

3 Q. Okay. That's Chacon, and then who is next
4 to Chacon?

5 A. I can't remember.

6 Q. Then the next one?

7 A. Jesse Ibarra.

8 Q. So Ibarra is in the corner; right?

9 A. Yes.

10 Q. Do you know Augustine Saenz?

11 A. I think that's Spider.

12 Q. That's Spider; right? Okay. So it's you,
13 Garza, Augustine Saenz, Leroy Lucero?

14 A. Yes.

15 MR. COOPER: Mr. Otero, I don't have any
16 more questions. Thank you very much.

17 THE COURT: Thank you, Mr. Cooper.

18 Any other defendant may have
19 cross-examination of Mr. Otero? All right,
20 Mr. Beck, do you have redirect?

21 MR. BECK: I do, Your Honor.

22 THE COURT: Mr. Beck.

23 MR. BECK: May we see Exhibit 93, please?

24

25

1 REDIRECT EXAMINATION

2 BY MR. BECK:

3 Q. Mr. Otero, I think Mr. Sindel asked you a
4 question about this. Did you know this gentleman as
5 Christopher Chavez or as Critter?

6 A. Both.

7 Q. And I think you were just asked about
8 Spider. Did you know him as Spider or Augustine
9 Saenz?

10 A. I've known his name, but I just don't keep
11 it in my vocabulary, you know what I mean, in my
12 mind. But yeah, I knew him by Augustine, but --

13 Q. I guess that gets to my point. When
14 you're talking in the cells with all of these
15 gentlemen in the pod --

16 A. Usually by nickname.

17 Q. And do you go by Joseph Otero in the
18 prison system?

19 A. No, I go by Jo Jo.

20 Q. When you talked to the agents and to me
21 about Eugene, what did you call him?

22 A. Eugene.

23 Q. Did you call him Huero?

24 A. Huero.

25 Q. May we have Exhibit 88, please. This

1 gentleman -- how did you know him?

2 A. By Trigger.

3 Q. You didn't know him by Allen Patterson,
4 did you?

5 A. No.

6 Q. May we have Exhibit 113, please? Can we
7 do a side-by-side with Exhibit 646, please?

8 Mr. Otero, I'm showing you again two
9 offender physical location histories, one of them
10 for Rolando Garza. And what name did he go by, if
11 you know?

12 A. Looney.

13 Q. Looney. And then next to that I'm showing
14 you Leroy Lucero's. Do you see here at the bottom,
15 it's kind of blocked out, do you see that Mr. Lucero
16 was housed in Ocean 1 yellow pod from December 2000
17 to March 2001?

18 A. Yes.

19 Q. And is that where you were just discussing
20 with Mr. Cooper -- is that where you remember him
21 being housed?

22 A. Yeah.

23 Q. And now, again, if we look over here at
24 Mr. Garza's, he was housed in O-1 yellow pod from
25 December 2000 until, again, he was killed on March

1 26, 2001; right? Do you see that on the left?

2 A. Yes.

3 Q. And so does it appear you to that
4 Mr. Lucero and Mr. Garza were housed in the same
5 pod, a couple doors away, for, let's see here,
6 December, January, February, March -- for almost
7 five months together?

8 A. Yes.

9 Q. And during that time, to your knowledge,
10 did Mr. Lucero kill Mr. Garza?

11 A. No.

12 Q. And then if we look over here on the
13 right-hand side, was he, in fact, actually
14 discharged from prison -- on the next line-up --
15 three days before Mr. Garza was killed?

16 A. Yeah.

17 Q. And I think you talked with Mr. Cooper
18 about what you'd said in the past about Smurf. And
19 I want to make sure I got that right, that he would
20 squash any problems in the S; is that right?

21 A. They always asked, came to him for
22 information -- or not information, for -- to look up
23 to him.

24 Q. Okay. But I guess with Mr. Cooper, it
25 seemed to me he was talking to you about, if

1 administration was having problems with the S, he
2 would talk to Smurf, or Leroy Lucero; and Leroy
3 Lucero would sort of fix those; is that true?

4 A. Yes.

5 Q. So this is the same Leroy Lucero who was
6 moved out of prison three days before Rolando Garza
7 was murdered; is that right?

8 A. Yes.

9 Q. May we have Exhibit 83 on the right side
10 where Mr. Lucero's offender location history is?

11 I'm showing the offender location history
12 for Billy Garcia. And do you see here in March,
13 right above where I drew that red line, in March of
14 2001, on the 7th, he was moved from PNM North
15 Facility to Southern New Mexico Correctional
16 Facility?

17 A. Yes.

18 Q. And then it looks to me like he spent
19 March 8 to March 20th --

20 MR. COOPER: Your Honor, objection,
21 leading.

22 MR. BECK: I'll rephrase.

23 THE COURT: All right. Why don't you?

24 BY MR. BECK:

25 Q. Where did Mr. Garcia spend March 8 to

1 March 20th?

2 MR. COOPER: Objection, Your Honor. Lack
3 of personal knowledge; or hearsay, if we're going to
4 use this document to make that determination.

5 THE COURT: Well, he can use the document.
6 I won't sustain it.

7 But you might ask him, for the jury and
8 counsel's edification, if he is -- does he have any
9 knowledge other than what this chart is?

10 BY MR. BECK:

11 Q. Okay. On this chart, where does it say on
12 this chart that Mr. Garcia spent March 8 through
13 March 20 of 2001?

14 A. Says right there, Southern New Mexico.

15 Q. Is that in G pod, 1174?

16 A. I don't even know where he was housed.

17 Q. Okay. Does it say on this chart that on
18 March 20 to March 28, he was housed at SPT, B-1174?

19 A. That's Lincoln pod.

20 Q. And let me ask you, at Southern, was there
21 a Lincoln pod and a Paul pod?

22 A. Yes.

23 Q. And did you hear rumors about Mr. Wild
24 Bill being at the facility?

25 MR. COOPER: Objection.

1 MR. BECK: Just asking if he heard; not
2 what the rumors were.

3 MR. COOPER: Leading.

4 THE COURT: Well, overruled on leading.
5 On the rumors themselves, why don't we talk up here
6 at the bench?

7 (The following proceedings were held at
8 the bench.)

9 THE COURT: Given that it's already been
10 established that he knows he was there, do we need
11 to get into the rumors?

12 MR. BECK: I was just responding to the
13 foundation, not offering them for whether they were
14 true. He said, is there any way he knows.

15 THE COURT: But what is his -- I mean,
16 he's already testified, I think, that there were
17 rumors.

18 MR. BECK: Right.

19 THE COURT: Not that there were rumors,
20 but he knew.

21 MR. BECK: Right.

22 THE COURT: So what is the purpose of the
23 rumors? It can't be his state of mind, because he
24 testified he knew he was there.

25 MR. BECK: They asked if there was any

1 way, aside from the chart.

2 THE COURT: Oh, the chart itself.

3 MR. BECK: That's what I was doing with
4 that question.

5 THE COURT: Why don't you just ask him.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: Mr. Otero, do you know --
9 other than the chart that Mr. Beck has up on the
10 screen or had up on the screen, do you have any
11 other knowledge as to whether Mr. Billy Garcia was
12 at the facility?

13 A. Yes.

14 THE COURT: All right. And does it come
15 from your own personal knowledge, or does it come
16 only from -- well, does it come from your own
17 personal knowledge?

18 A. I saw him around the compound.

19 THE COURT: Let's just leave it at that.
20 Does that work? All right.

21 Let's don't take a break, but let's stand
22 up and stretch a little bit. We're having a little
23 Monday morning -- take a few seconds.

24 All right. Everybody be seated.

25 Mr. Beck, if you wish to continue your

1 direct, you may do so at this time.

2 BY MR. BECK:

3 Q. If we could bring Exhibit 83 and 646. So
4 again, focusing here on the March 2001, it looks
5 like -- well, let me ask you this. What is
6 orientation?

7 A. That's where you go for a week or so
8 before you go to your housing unit.

9 Q. Okay. So is that what happens when you're
10 moved to a new facility?

11 A. Yeah.

12 Q. Does it look to you like Mr. Garcia was in
13 orientation in, I think, L pod from March 8 to March
14 20?

15 A. Yes.

16 Q. And then it looks like -- does it look to
17 you like he was moved to Paul pod on March 20?

18 A. Yes.

19 Q. And is that six days before Mr. Garza was
20 killed and discharged from the Southern New Mexico
21 Correctional Facility?

22 A. Yes. Lincoln and Paul units are way
23 across from the compound. They're separated.

24 Q. So can we see Exhibit 860, if memory
25 serves me right. So if we're looking at the

1 overhead, if we're looking at Ocean 1 and Paul 1,
2 are P and L -- where are they on this?

3 A. The L units are to you far left at the
4 top. Right there.

5 Q. Those units?

6 A. Lincoln 1 and Lincoln 2.

7 Q. Thank you. Mr. Sindel asked you about --
8 you've said before you heard a scuffle. I think
9 before you heard a scuffle at 5:30 in the morning?

10 A. Yes.

11 Q. Are you relying on -- did you look at your
12 watch or are you relying on what time they open the
13 pod doors?

14 A. Just the time the doors click. Sometimes
15 they open them early. Sometimes they open them at
16 5:30, 6:00. It depends on whatever officer is on
17 the unit. Some officers, the sergeants will -- the
18 rover will open it right away as soon as he does his
19 bypass, because they call running club like about
20 5:00, 5:30.

21 Q. So it sounds to me like you weren't
22 looking at your watch or your cellphone for that
23 time; you're relying on when the doors open?

24 MR. SINDEL: Objection, leading.

25 THE COURT: Sustained.

1 BY MR. BECK:

2 Q. How did you know what time you heard the
3 sounds?

4 A. Usually that's the time they pop the
5 doors, about 5:15, 5:00.

6 Q. And so if there is a log sheet that says
7 what time they opened the doors that morning, would
8 you rely on that for the timing?

9 A. Yeah.

10 Q. With Mr. Solis you went over a lot of
11 statements that you've given to law enforcement in
12 the past. Do you remember that?

13 A. Yes, sir.

14 Q. I think Mr. Sindel asked you about a
15 tablet in discovery. Do you remember that?

16 A. Yeah.

17 Q. Do you know what that is?

18 A. No.

19 Q. Have you been provided your previous
20 statements to you, the New Mexico State Police
21 before, in this case?

22 A. Have I ever been given them?

23 Q. Right.

24 A. No.

25 Q. Were you ever a defendant in this case?

1 A. Not until recently.

2 Q. All right. So do you have the discovery
3 for this case?

4 A. No.

5 Q. Were you given your reports from the New
6 Mexico Corrections Department?

7 A. No.

8 Q. So do you remember what you said to the
9 New Mexico Corrections -- or excuse me, to the state
10 police on March 26, 2001?

11 A. Not totally.

12 Q. All right. Would it help refresh your
13 recollection if I showed you the report that the
14 state police wrote?

15 A. Yeah.

16 Q. 741.

17 MR. BECK: May I approach, Your Honor?

18 THE COURT: You may. When you said 741,
19 that's what it's marked.

20 MR. BECK: The Bates No.

21 THE COURT: Oh, the Bates No.

22 BY MR. BECK:

23 Q. I've shown you Bates No. 741. Do you see
24 where that has a summary of your interview there?
25 Do you see where that has a summary of your

1 interview on that page?

2 A. Yes.

3 Q. And does that refresh your recollection of
4 sort of what you told the police that day?

5 A. Yes.

6 Q. Did you tell police on that day that you
7 saw Mr. Chavez, Mr. Patterson, and Mr. Martinez
8 murder Rolando Garza?

9 A. Yes.

10 Q. And you may be misremembering. I will
11 show it to you one more time. Go ahead and read
12 through that paragraph summary of your statement,
13 and look up at me when your memory is refreshed
14 whether you told them you saw Mr. Garza murdered.

15 A. I couldn't really see. I don't have my
16 glasses.

17 Q. On March 26, 2001, did you tell them that
18 you saw Rolando Garza killed?

19 A. No.

20 Q. Is that, as you said before, you were
21 still trying to be an inmate?

22 A. Yes.

23 Q. Shortly after that, did you tell STG
24 coordinator Cheryl Lackey -- did you indicate to her
25 that Allen Patterson, Eugene Martinez, and Chris

1 Chavez are the inmates who murdered inmate Garza?

2 A. Yes.

3 Q. And did you tell her that around July --
4 or in the weeks following March of 2001?

5 A. Yes, she interviewed me again.

6 Q. To be fair, did you tell her that you saw
7 them strangling --

8 A. Yes.

9 Q. Okay. In that New Mexico State Police
10 report, was it a verbatim -- was it a transcript of
11 your recording, or was it a summary of what you told
12 them?

13 A. Just like a summary.

14 Q. In your experience reading -- have you
15 read discovery in some of the cases of yours before?

16 A. Yes.

17 Q. In reading those discoveries, are the
18 police reports transcripts of your conversations
19 with them or summaries?

20 A. Some are transcripts, some are summaries.

21 Q. And in your experience in reading over
22 your discovery, when you read over a police report,
23 does it contain every word you told police --

24 A. No.

25 Q. -- or a summary?

1 A. No.

2 Q. And I think -- so when Mr. -- so when you
3 told police -- I think you went over this -- in
4 2001, when you told police that you heard on TV it
5 was a strangling, did you hear it was -- did you
6 know it was a strangling because you heard it on TV,
7 or did you know it was a strangling because you saw
8 those gentlemen strangle Mr. Garza?

9 A. Because I seen it happening.

10 Q. In 2001, did you want to come and testify
11 against the defendants?

12 A. Yes.

13 Q. What -- let me ask you this: What have
14 you been promised for testifying today?

15 A. Nothing.

16 Q. What did you ask for to testify today?

17 A. Nothing.

18 Q. Why are you here testifying? What changed
19 since 2001?

20 A. Well, right now, to be honest with you,
21 the last person I gave a fuck about in this world
22 passed away in January; that was my mother. And me
23 and her had a conversation when I was out on parole,
24 and --

25 MR. SINDEL: Objection, Your Honor,

1 hearsay.

2 THE COURT: Well, do you need any more
3 than that?

4 MR. BECK: No.

5 BY MR. BECK:

6 Q. Based on that conversation, is that why
7 you decided to talk to the FBI in recent weeks, and
8 then to come testify here today?

9 A. Yes.

10 MR. SINDEL: Object to leading.

11 THE COURT: Overruled.

12 MR. BECK: Nothing further. Thank you.

13 THE COURT: Thank you, Mr. Beck.

14 All right. Do you have something,

15 Mr. Solis?

16 MR. SOLIS: I do, Your Honor.

17 RECROSS-EXAMINATION

18 BY MR. SOLIS:

19 Q. Hello again, Mr. Otero. So there are some
20 risks to rehearsing testimony, isn't there,
21 Mr. Otero?

22 A. What?

23 Q. Risks to rehearsing your testimony. There
24 are some.

25 A. I don't rehearse.

1 Q. You don't think you might misremember
2 things?

3 A. I don't misremember things.

4 Q. Okay. I wanted you to -- if I could have
5 Government's Exhibit 75, please.

6 Mr. Otero, we reviewed with you on some
7 examination a little while ago this exhibit. Do you
8 see it?

9 A. Yes.

10 Q. And then reviewed with you was the
11 location of several or numerous inmates in that pod.
12 And I wanted to point out to you and you, in turn,
13 point out to the jury if, on the top tier, next to
14 the shower and the mechanical room there, here is
15 Mr. Chris Chavez' house?

16 A. Yes.

17 Q. On the top tier; correct?

18 A. Yes.

19 Q. And your house was at the bottom over
20 here; is that right?

21 A. Yes.

22 Q. Mr. Garza, his house was next door to you,
23 here; is that right?

24 A. Yes.

25 Q. And to get there from Mr. Chavez' house,

1 there is a stairwell or stair passageway when you
2 come this way down this way, down the stairs and
3 into that area; is that right?

4 A. You've got to go down the walkway.

5 Q. Thank you.

6 MR. SOLIS: No further questions, Your
7 Honor.

8 THE COURT: Thank you, Mr. Solis.

9 Mr. Beck, any further redirect?

10 MR. BECK: No, Your Honor. He may be
11 excused.

12 THE COURT: Mr. Otero, you may step down.

13 Is there any reason from the defendants
14 that he cannot be excused?

15 Not seeing any, then you're excused from
16 the proceedings. Thank you for your testimony.

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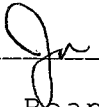
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2 STATE OF NEW MEXICO

3
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5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 5th day of May, 2018.

13
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